TAX RULES GOVERNING PRIVATE FOUNDATIONS

HEARINGS

BEFORE THE

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OF THE

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HOUSE OF REPRESENTATIVES

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TAX RULES GOVERNING PRIVATE FOUNDATIONS

THURSDAY, JUNE 30, 1983

House of Representatives,
Committee on Ways and Means,
Subcommittee on Oversight,
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Charles B. Rangel (chairman of the subcommittee) presiding.

Chairman Rangel. The Subcommittee on Oversight of the Ways and Means Committee will resume its review of the rules governing private foundations.

The Chair recognizes Mr. Conable.

Mr. Conable. I would like to welcome all the witnesses and to express the appreciation of the committee for their being willing to come in and advise us about this important area of legislation. It has been dealt with only piecemeal since 1969 and is entitled to the careful and searching examination that Chairman Rangel is giving it in the hearings today looking toward, I hope, some type of omnibus legislation that will codify the various changes that you deem appropriate in the management of the foundation legislation. I hope all the witnesses out there in the audience will understand that their full testimony will be put in the record and they may summarize. We have a great many people who are testifying today and it is going to be a tough day as far as the floor is concerned, so we will be in and out quite a bit. It will be greatly appreciated if you can summarize your testimony to some extent in the interest of expediting the rather long list of witnesses, some of whom will be sitting here a large part of the day awaiting their chance.

Thank you.

Chairman Rangel. The Chair would like to emphasize that to make certain during these 3 days of hearings that we have the benefit of the testimony of as many people as possible, we would like to conclude by having people from the public sector, those people concerned about excess business holdings, divestiture, of course, testify.

For that reason, Mr. Conable and I agreed that we were going to ask the panels to abide by the committee's 5-minute rule which our staff should have advised you of already.

This does not mean, as Mr. Conable pointed out, that your full testimony won't appear in the record. The record will remain open, too, in case there are questions you would like to answer that we didn't have the opportunity to ask.

That having been said, Mr. Vernon Jordan, trustee of the Rockefeller Foundation, an old friend of the committee and certainly a great servant of the people, has honored us with his presence to share his views.

Mr. Jordan, welcome to this subcommittee.

STATEMENT OF VERNON E. JORDAN, JR., TRUSTEE, THE ROCKEFELLER FOUNDATION

Mr. **Jordan**. Thank you, Mr. Chairman.

Mr. **Conable**. I would like to welcome Mr. Jordan too. He and I serve on the senior advisory committee up at Harvard together and we are old friends.

Mr. **Jordan**. Thank you, Congressman Conable.

Mr. Chairman, members of the committee, it is a pleasure to appear before my own congressman, Congressman Rangel. I am delighted to be here.

Mr. Chairman and members of the subcommittee, I am Vernon E. Jordan, Jr., partner in the Washington office of Akin, Gump, Strauss, Hauer and Feld, and trustee of the Rockefeller Foundation, the John Hay Whitney Foundation, the Taconic Foundation and a former trustee of the New World Foundation.

I am pleased to have this opportunity to present my perspectives on the work of private foundations.

As a foundation trustee, and as a foundation grantee for many years, I firmly believe foundations can provide responsible, accountable, and flexible private support for the diverse efforts in America seeking to solve great problems and to serve our Nation's basic needs, including equal access to education, employment and training, health care, and justice; better food and housing, academic and scientific research and artistic expression.

Although our needs are great, there is nothing automatic in the completion of these missions. Trustees of the over 22,000 private foundations in this country must choose, within the mandates of each foundation's charter, the best use of foundation resources.

For example, the John Hay Whitney Foundation chose to develop leaders by supporting individuals from varied ethnic groups who are trying to improve their communities through grassroots efforts intended to lead to greater social justice and equity.

Perhaps most important was an original opportunity fellowship program which supported men and women who went on to be dynamic, creative leaders.

The ~~fellows included~~ Eleanor Holmes-Norton, attorney and former Chairman of the Equal Employment Opportunity Commission; Grace Bumbry, world-renowned mezzo-soprano; Joyce Hughes, a law professor; Nathan Huggins, a historian; Leon Higginbotham, a judge on the U.S. Court of Appeals; Charles Hamilton, a political scientist; C. Eric Lincoln, a theologian; Marian Wright Edelman, head of the Children's Defense Fund; and Carl Holman, President of the National Urban Coalition, a sterling list of accomplished Americans and a great tribute to the wisdom and philanthropic leadership of John Hay Whitney.

But many problems are not susceptible to solution by development of individuals.

At the Taconic Foundation, local community programs at close to $1 million per year further equal opportunity through housing and youth employment in the New York City area.

The New World Foundation has taken part of its guidance from de Toqueville, "When men combine, they are no longer isolated men, but a power seen from afar, whose actions serve for an example and whose language is listened to."

It recently published a report on the funding of community self-help initiatives in social service delivery, the arts, and urban and rural development.

In choosing to combine the idea of support for individual leadership with "the institutional capacity to achieve what the applicant has in mind" the New World Foundation program emphasizes first "the right education for children" which includes seeking improvements in teaching methods and school systems, and second programs and projects designed "to promote mutual understanding among persons of different racial and national backgrounds."

The combination of individual and institutional support has been an important ingredient in foundations' efforts to help bridge—they cannot fill—the gaps created by recent budget cutbacks.

Foundations focus on the causes of problems rather than their effects.

John Rockefeller, Sr., said, "The best philanthropy is a search for cause, an attempt to cure evils at their source."

In these hard and difficult times, some foundations have stood with their grantees. Foundations have given emergency loans to tide grantees over, or loans to facilitate transitions to other funding sources.

Others have made creative, technical assistance grants to provide their recipients with services or information to help streamline their operations, deliver better services, or deal with the increased demand on their level and in some cases reduced resources.

In troubled times, foundations have even greater responsibilities. As John D. Rockefeller III said:

> To measure up to this challenge—of resolving our complex and multifaceted problems—we in the foundation field must be willing to innovate, to take risks, to make mistakes.

Mr. Chairman, I believe the Rockefeller Foundation has measured up to that challenge with a worldwide impact on the 20th century. Chartered in 1913 to promote the well-being of mankind throughout the world, it has been involved in many of the major breakthroughs of this century.

One of its first efforts was to protect humans from the hookworm which damaged severally the intestines, muscles, joints, and physical and mental functioning.

In the early decades of this century, scores of Rockefeller Foundation-sponsored health workers spread out through the South to treat sufferers and prevent reinfection in a dramatic conquest of the hookworm.

In another early effort, seven foundation doctors died in the ultimately successful quest for a cure for yellow fever.

Under the foundation's auspices, a cure was found for malaria, and successful, although sometimes fatal, efforts made to combat malarial mosquitoes in Central America and South America.

During the 1950's, large foundations, including Ford and Rockefeller, initiated agricultural research into major food grains like wheat and rice. The green revolution, as it came to be called, began with a Rockefeller Foundation project in Mexico that sought to develop new strains of the basic food grains which would yield more per plant, be more resistant to disease, and be suitable to multiple cropping each year.

Eventually research institutes situated all over the developing world were built, staffed, and funded by a consortium of international agencies, national governments, and foundations to study and develop new strains of seven major types of grains.

In 1971 a Rockefeller Foundation scientist was awarded the Nobel Peace Prize for work developing miracle rice and wheat strains in the green revolution which increased yields dramatically and provided food self-sufficiency for developing nations such as India and Mexico.

Today the foundation spends almost half of its $45 million annual budget overseas for the following:

First, an agricultural program which seeks to increase food production, develop food and agricultural policies here and abroad, programs to strengthen agricultural research into food legumes, animal diseases, and plant breeding;

Second, an international relations program which seeks to strengthen our understanding of the urgent issues of international regional security and economic cooperation; and

Third, a population and health program which funds research in the control of neglected diseases of the developing world, in population dynamics including immigration, the health of entire populations, and reproductive biology, and new methods of distributing and using the large amounts of vital medical information generated by research.

In our increasingly interdependent world, the Rockefeller Foundation trustees believe the peaceful, wise, and humane resolution of these issues is essential.

Let me now move into the domestic component of the Rockefeller Foundation's program and share with you my sense of the value of foundations from both sides of the grantmaking table.

I have been a foundation trustee since 1961, serving four foundations. Since 1963, I have spent an enormous amount of time seeking foundation support for the Southern Regional Council, the Voter Education Project, the United Negro College Fund, the National Urban League, and other community-based groups.

One of the major interests of the Rockefeller Foundation has been a deep and continuing involvement in equal opportunity. The foundation's equal opportunity program began in 1963 as an attempt to assure full participation of minorities in the rights and responsibilities of American citizenship and continues to this day.

Although there has been significant progress by minorities in the past several decades, such progress has only served to sharply highlight the extent of problems still facing racial minorities.

In the beginning, the equal opportunity program sought to spur desegregation in higher education and to encourage the development of leadership among minority groups. It funded such universities as Duke, Emory, Vanderbilt, and Tulane to recruit and assist disadvantaged graduates of southern high schools and UCLA in California to give special emphasis to the problems of Hispanics.

Support was given to such groups as the Associated Colleges of the Midwest for experimental programs to increase the prospects for achievement by talented minority students.

The program also sought to strengthen black colleges through development funds for the United Negro College Fund and direct grants to private black colleges.

The program made grants to advance interracial understanding and reduce discrimination—the NAACP, for example, received funds for a community service division and the expansion of its southern programs.

Beginning in 1964 the National Urban League was given money to set up nonacademic leadership programs in 10 cities in the hope of increasing black representation on boards of civic and welfare organizations and of developing local support.

Incidentally, this project was eventually redirected to focus on increasing minority representation at the State and National levels.

The foundation also made grants-in-aid to individuals from minority groups for advanced or special training, for research, to strengthen black colleges, and to improve education for disadvantaged and minority children.

During the sixties and seventies, the foundation assisted in complementary efforts to improve health care, both training and service delivery, the urban environment, and opportunities in the arts and humanities.

In the late sixties, foundations saw the wisdom of direct investments in urban areas. Within the past 20 years, the Urban League has received support from various foundations for its new thrust program, which was designed to meet, with immediate and tangible results, the problems of urban racial ghettoes; its veterans affairs program to provide counseling services for black veterans; and other programs helping blacks deal with problems in housing, education, employment, and health care.

Successful support has also been provided for a program to improve volunteer leadership in black communities of Virginia and Georgia, and for management and education-specialist training within the National Urban League's local affiliates.

The Atlanta Urban League is involved in a new Rockefeller Foundation initiative providing employment training programs for single, minority female heads-of-households.

Increasingly, Mr. Chairman, these women and their families are found in great poverty. We trustees hope that these job training projects will make a difference in breaking the intergenerational cycle of poverty.

Significant foundation efforts have not been solely in the cities. The foundation funded programs to help relieve black poverty in the rural south where mechanization and black migration to the cities had left regions largely ignored, underdeveloped, and poverty stricken.

One successful effort to remedy the problems found there is the Mississippi Action for Community Education, or MACE, probably the most effective organization of its type in the South, a membership organization which has successfully launched community-based organizations in a 16-county target area in the northwest corner of Mississippi.

MACE helps train and support community leaders, start economic development projects including industrial operations, teach farming methods, and provide children's services, all part of the MACE's efforts to build from the bottom up.

Mr. Chairman, foundation's activities have been wide, significant, and deep, whether helping build from the bottom up as with MACE, or from the top down as with funding for National Urban League programs; from leader to community as with the John Hay Whitney Foundation; from neighbor to neighbor as with the New World and Taconic Foundations; or from nation to nation as with the Rockefeller Foundation.

Philanthropy, Mr. Chairman, is a tough business involving hard choices.

Dwight MacDonald put it this way: "A foundation * * * is a large body of money completely surrounded by people who want some."

Trustees bear the enormous responsibility of deciding which course foundation grants take. What foundations do is dependent to a large degree upon the charter of the original donor, the asset size, the opportunities they make and the visions they have.

I agree with Mr. Rockefeller that foundations must take chances, be innovative, risk and dare to fail.

Foundations cannot solve our social problems nor alone empower us with purpose and new opportunities, but they are a critical part of America's social fabric and of our ability to understand, adapt, change, innovate, create, care and share.

If foundations did not exist in America, we would have to invent them because of their profound impact on our lives. Foundations are an indispensable part of American life and character.

Mr. Chairman, I have been on both sides of the table, as grantor and grantee. I know something of the problems of both. The grantors have more requests than money and the grantees' needs exceed available resources. Neither side is ever absolutely satisfied.

On the whole, American foundations have been responsible and responsive. The good that foundations have done far outweighs whatever good they have failed to do and we are a better nation because of it.

Every cause needs more money; every grantee can justify its needs. To that end, American foundations need and deserve the support of the Congress of the U.S. as you jointly address the Nation's needs today and in the future.

Mr. Chairman, I thank you for this opportunity.

Chairman RANGEL. Thank you, Mr. Jordan. We are indeed fortunate to have the benefit of the views of someone who has great experience on both sides of the table.

From the grantees' perspective, we have received testimony that some of the foundations are not accessible; that community groups don't know who serve on the boards; and that there are maybe not enough minorities there. We've heard that foundations don't take risks; that they try to deal with safe organizations and certainly those that already have national reputations. We've heard that there should be more public information generally available as to who serve on foundation boards, and what they are doing with their grants, and that, of course, while we can't do too much in terms of minority representation, in terms of public identification certainly, at least, we should know who the people are.

Would you care to comment on that?

Mr. **Jordan**. I think much of what you said is absolutely right. I think that there has always been a problem of legitimacy for certain groups. I can remember a time when I would not have been quite as acceptable as in later times in my career in foundation board rooms. But that is a process.

I think the foundation community is much better than it was when I started in this business 20 years ago. They are more responsive, more representative, more sensitive and, while they have made greater improvements in that area, I think, Mr. Chairman, that they have an awful long way to go.

Especially in terms of minority representation there are major foundations that don't have representative boards. I don't like it. I think it is not right. I think it is not in the interest of the philanthropic purpose of the foundations.

On the other hand, Mr. Chairman, I can point to any number of major foundations that have demonstrated initiative; they have taken risks; they are representative of the community; and I think have made, as I said in my testimony, an enormous difference.

I believe that foundations can be very helpful in the process of legitimizing groups, taking risks on unknown groups. I have spent a lot of time in that process, both as a trustee and as a grantee, even when I was at the Urban League, to use what little influence I may have had to see to it that nontraditional people at least got in the door. That is half the problem. Getting in the door, getting access.

Chairman **Rangel**. What was your experience in identifying foundations that were not as well known as the Rockefeller Foundation, if you wanted to assist a responsible community group and obtain a grant? Where would you get that information if you were not a part of the grantor segment?

Mr. **Jordan**. My experience is even inexperienced, naive grantees, once they get involved in the issue, have some intuitive notion about where to call and who to call.

Sometimes they don't get their phones answered, but oftentimes they do and access is created.

I think I can make a case that more access is created than is generally the impression.

Now, access is one thing. Getting the grant is another.

Chairman **Rangel**. Talking about the up-front part, there were many complaints that many of the foundations are not listed in the phone book—no one knows they exist except the grantors.

Mr. **Jordan**. I think there is a public responsibility on the part of the foundation to make itself known, to make its purposes known, to make its philanthropic intentions known to everybody.

It seems to me that the foundations that cannot operate in the light of day ought not to operate.

Chairman RANGEL. Mr. Conable.

Mr. CONABLE. Thank you, Mr. Chairman.

Mr. Jordan, it has been suggested that post-1969 foundations are not as responsive, not as inclined to be risk-takers as those in the pre-1969 foundation world.

I notice you say that you believe there is greater sensitivity now than there was before. At least 20 years ago is your base of experience, I know. Are there any steps you can think of that the tax-writing committee should take to improve the responsiveness of foundations generally?

Do you have any sense of disappointment in an inhibition in the law, for example, currently that you feel creates an obstacle or impediment to the process?

Mr. JORDAN. I think, Mr. Conable, that much of the Tax Reform Act of 1969 in and of itself created some impediments to foundations and their grant-making processes.

For example, the five-State requirement for voter registration, I believe, is punitive. I ran from 1965 to 1970 the Board of Education Project of the Southeast Regional Council. We registered 2 million voters in the Southern States of the Old Confederacy. In order to bring a new organization into being, that organization could not, because of the Tax Reform Act of 1969, operate and do voter registration.

I think that is an impediment. I would like to see that out.

I think that some of the self-dealing provisions of the Tax Reform Act of 1969 have been inhibiting not only creative grant-making, but it has cut back on foundation resources.

The Rockefeller Foundation included, because of that self-dealing requirement, had to move out of Rockefeller Center, which cost an enormous amount of money, and that money used for the move and relocation I could have well used in the budget for the Urban League or the Children's Defense Budget or the NAACP budget.

So there are provisions that have been punitive and have not encouraged the kind of risk-taking that some people think ought to be taken.

I also think, Mr. Chairman, that there has to be a recognition that the world is changed. The kind of excitement that went on in the sixties is not going on in the seventies, so things have changed.

I think that if you look at that change and look at where foundations were in the sixties and what they were doing, I think it is reasonable to say, given what has gone on in movements in this country, especially the civil rights movement, that they probably are consistent and I would like more. All grantees would like more.

No grantee ever has enough, as I said in my testimony, but no foundation ever has enough to give either.

Mr. CONABLE. Thank you, Mr. Jordan.

Chairman RANGEL. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

Mr. Jordan, in connection with the responsiveness of the various foundations, for example, in educational areas, do you find the small colleges and universities have the same degree of accessibility to the foundations as the larger Harvards and Yales and so on?

Mr. JORDAN. Well, I think the trend in recent years has been geared toward different institutions.

I think if you asked the traditional institutions, Harvards, Yales, Princetons, Columbias, et cetera, about how they feel about funding, I think they would conclude that the funding has turned away from them to other interests and to other causes.

By the same token, if I were still running the United Negro College Fund, I would say not enough is coming my way. That is the process of grantee politics.

You argue your case depending on which side you are on. On balance, I think, yes, there is a traditional accessible route for traditional powerful institutions that small institutions have not historically had.

I think on the other hand that that balance is slowly being redressed and that a small college in the South would have as, almost as equal an opportunity as a big university in the East.

Mr. DUNCAN. Thank you very much. Thank you, Mr. Chairman.

Chairman RANGEL. Mr. Flippo?

Mr. FLIPPO. Thank you, Mr. Chairman.

I want to thank you for your testimony, Mr. Jordan. I wonder if you would tell us what you think the major problem facing foundations is today?

Mr. JORDAN. Well, if I were a grantee, I would think the major problem facing the foundations is not enough largess to pursue its philanthropic purpose. That would be one.

I would think that from the point of view of the grantee, access—public information, how to get to it, how to pierce the foundation corporate veil, get to the program officer—would be a second problem.

I think somehow that you can bring those two things together.

I really believe that for the most part especially for the large foundations and the traditional small foundations, New World, Taconic, Rockefeller, Ford, Carnegie, that there is a sense of urgency about responsiveness, about openness, and some understanding of the needs of grantees. There is a problem between understanding and meeting the needs and that is always difficult because of the requirement of limited resources.

I think there is also a tremendous trustee responsibility to help set the overall policy for grant-making, and I must tell you that in my 20 years I have seen an enormous liberalization of the process. I can remember times, Mr. Chairman, when what I was doing in the South was not acceptable at some foundations, and I can think of a few where it is still not acceptable. I can think of one or two large ones, particularly one in the Midwest that particularly upsets me because of its absence of maximum feasible representation.

I sort of don't like that.

But I think that limited resources on the one hand, accessibility on the other, and definition of foundation corporate purpose would be another problem.

Let me add this, Mr. Flippo, in view of the recent cutbacks. Foundations have had undue pressure—and I think the President has done philanthrophy and volunteerism a disservice to suggest that people suffering cutbacks in programs can make that up or that cutbacks can be made up by volunteerism on the one hand and by foundation grants on the other.

I think that is a disservice to the foundations.

Mr. **Flippo**. I thank the gentleman for his response.

Chairman **Rangel**. Mr. Dorgan?

Mr. **Dorgan**. I have no questions, Mr. Chairman.

Chairman **Rangel**. Mr. Gephardt.

Mr. **Gephardt**. No questions, Mr. Chairman.

Chairman **Rangel**. On behalf of the Congress, the full committee and the subcommittee, we thank you for your contribution. The record will remain open. Members may have other questions. We hope we can gain access to you for those and have further exchanges and get your advice as we try to make our recommendations to the full committee.

Mr. **Jordan**. Thank you, Mr. Chairman. Thank you, members, and it has been a pleasure to be here.

Chairman **Rangel**. Next, we have attorney Bernard Aidinoff, chairman of the Section on Taxation of the American Bar Association. We have your full statement, and we hope that you will be able to review some of the regulations and existing law, its impact on the foundations, and make whatever recommendations you can make to this subcommittee.

We will appreciate your making whatever recommendations you can.

STATEMENT OF M. BERNARD AIDINOFF, CHAIRMAN, SECTION OF TAXATION, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY JIM HASSON, INCOMING CHAIRMAN OF THE COMMITTEE ON EXEMPT ORGANIZATIONS OF THE SECTION OF TAXATION

Mr. **Aidinoff**. Thank you, Mr. chairman, and members of the committee.

I am M. Bernard Aidinoff. I am chairman of the Section of Taxation of the American Bar Association, which has 26,000 members, many of whom are engaged in advising foundations and in advising grantees on how to get aid from foundations.

I am accompanied by Jim Hasson, who is incoming chairman of the Committee on Exempt Organizations of the Tax Section.

Before discussing some areas of concern, let me provide you with a general overview of our section's findings and observations with respect to foundations.

First, the 1969 private foundation legislation has accomplished Congress' objective, insuring that foundations that receive the benefit of tax-exemption operate strictly in the public interest.

Second, it is important to preserve the basic framework of the private foundations provisions of the 1969 legislation in order to avoid a situation in which even infrequent abuses might recur.

Third, certain aspects of the current rules are so complex and rigid that they are either imposing unnecessary administrative costs on foundations or pose a significant inhibition to additional contributions to foundations or creative grant-making by foundations.

Let me discuss some of the areas which at least give us concern.

First, the taxable expenditure rules. Basically, the tax section recognizes and endorses the general objectives of these rules. However, there are areas where there could be improvement.

First, the rules with respect to the granting of scholarships: The present rules are so restrictive that most small foundations are just out of the scholarship area completely, and the rules are so restrictive with respect to company foundations' scholarships that we have had a substantial reduction in scholarships there, too.

This is an area where simplified rules imposed by the Congress might increase this type of grant-making. Perhaps the Internal Revenue Service could do it by itself, but it does not appear to be in the mood to do so, and our section would welcome the opportunity to work with your staff on this.

Chairman RANGEL. Why don't you make recommendations in that area for us?

Mr. AIDINOFF. We will send detailed recommendations to the staff; yes, sir.

Chairman RANGEL. Without objection, your full statement will appear in the record, and you may proceed.

Mr. AIDINOFF. Thank you.

The second area is expenditure responsibility. Other witnesses have already mentioned the fact that the inhibitions are too great and that they should be—there should be an easing in that area.

I don't propose to amplify on that since you have heard substantial testimony on that, I believe.

A third related problem relates to limitations imposed by current regulations on the ability to rely on official IRS determinations as to a grantee's public charity status.

In our opinion, they should be—private foundations should be—able to rely on IRS' determinations, and we think the law should be corrected accordingly.

As Mr. Jordan has already pointed out to you this morning, the self-dealing rules, while they generally operate properly, there are areas in which the self-dealing rules are restrictive. They are particularly restrictive with respect to actions by lineal descendants.

We believe the rule is much too broad presently, and basically the rules should only be applicable to direct family members, parents, grandparents, children.

With respect to excess business holdings, the tax section generally believes that the present rules are good rules. We doubt that a fundamental——

Mr. CONABLE. You say good rules?

Mr. AIDINOFF. Yes. They work well, and they represent good policy.

We doubt that a fundamental restriction of the excess business holdings rule is needed. There is concern about the adverse effect of the restrictions on newly acquired holdings. Extending the period of time available to a foundation for disposing of newly acquired business holdings such as those left to a foundation by bequest would facilitate gifts of business interests to foundations without changing the current level of permitted holdings. Current law gives a foundation 5 years to dispose of such holdings. We would advocate a longer period, such as 15 years.

Improvement needs to be done in the area of inadvertent violations. The penalty structure is much too harsh in this area, and we urge you consider changes in this area.

One important area where we believe you should give major attention is a simplification of the rules with respect to contributions to foundations.

Current law currently establishes different limits on the percentages of one's income which can be deducted for charitable gifts depending on the character of the donee and the nature of the donated property.

We believe that the current rules operate against private foundations, and it is the view of the section that the same types of limitations ought to be applicable to gifts to private fundations as to public charities.

We believe that the way to handle the private foundation problem, if there is an abuse, is in direct legislation dealing with such private foundations.

With respect to the public support rules, we believe that there can be improvement in the definitions so that we do not inadvertently bring in foundations which essentially are local operating foundations dependent on one or two local donors or foundations which really, throught inadvertence, lose their status as publicly-supported foundations.

We think statutory change should be made in this area.

Generally speaking, the tax section supports the existing rules. We believe, however, that there are worthwhile improvements that can be made which will make these foundation provisions operate more effectively and fairly.

Thank you for permitting me to testify.

[The prepared statement follows:]

STATEMENT OF M. BERNARD AIDINOFF, CHAIRMAN, SECTION OF TAXATION, AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Committee: My name is M. Bernard Aidinoff. I am Chairman of the 26,000 member Section of Taxation of the American Bar Association and I am pleased to be able to appear today to express the views of the Section on the provisions of the Internal Revenue Code affecting private foundations. In preparation for my appearance before you today, the Section's Committee on Exempt Organizations surveyed its members concerning these provisions of the Internal Revenue Code. Information and comment have also been sought from other members of the Tax Section. As a result of these investigations I can offer you an accurate assessment of the experience of tax practitioners throughout the country in working with the 1969 private foundation law. My testimony represents only the views of the Tax Section, and should not be construed as representing the position of the American Bar Association.

Generally, private foundations have complied with the 1969 Tax Reform Act. One reason for this high level of compliance is the extensive administrative attention provided by the Internal Revenue Service, which is specifically structured to address the administration and supervision of foundations and other exempt organizations. Such an organizational structure is of considerable assistance in providing the proper focus and attention to provate foundation issues. There is also a high level of professionalism and competence among the Internal Revenue Service personnel dealing with foundation matters, especially at the National Office level. In addition, the Internal Revenue Service has worked to improve its procedures, including design of the Form 990-PF and its instructions, and the quality of publications generally available to the public. Some significant administrative problems do need attention. For example, the recent GAO study of IRS implementation of the foundation information reporting requirements identified some deficiencies in IRS procedures. We support the administrative changes recommended by GAO, and endorse

GAO's conclusion that these relatively minor changes will ensure full foundation information reporting. Overall, the Internal Revenue Service has sought reasonably to interpret and apply the 1969 legislation.

Before discussing some of the areas of concern, let me provide you with a general overview of Section findings and observations. First, the 1969 private foundation legislation has accomplished Congress's objective—ensuring that foundations which receive the benefit of tax exemption operate strictly in the public interest.

Second, it is important to preserve the basic framework of the private foundation provisions of the 1969 legislation in order to avoid a situation in which even infrequent abuses might recur. Preservation of the integrity of the philanthropic community is important enough to justify the continuation of the current rules.

Third, certain aspects of the current rules are so complex or rigid that they either impose unnecessary administrative costs on foundations or pose a significant inhibition to additional contributions to foundations. Private philanthropy is important, especially as it motivates grass roots initiatives to solve society's problems. I urge you to remove the barriers to increased private charitable efforts outlined below.

I. RESTRICTIONS ON FOUNDATION OPERATIONS

A. The taxable expenditure rules

The taxable expenditure provisions of the 1969 Act prohibit foundations from making grants for lobbying or political purposes and impose detailed restrictions on foundation grants to individuals or organizations which are not public charities. The Section recognizes and endorses the general objectives of the taxable expenditures rules. However, interpreting and enforcing this provision uses an inordinate amount of foundation and Internal Revenue Service resources. Congress's objectives could be accomplished at substantially lower costs with the following simplifying changes in the taxable expenditure rules.

First, under current rules foundations are permitted to award scholarships and make educational loans only after completing detailed, complex, and time-consuming steps required to obtain advance Internal Revenue Service approval of their grant-making procedures. Rather than attempt to comply with these burdensome requirements, many private foundations, especially those outside major urban areas, have simply stopped granting scholarships. Foundations which have not ended their scholarship or loan programs since 1969 have generally not expanded them. Internal Revenue Service rules impose particularly onerous restrictions on scholarship programs administered by company-sponsored foundations. In our view, the diminution of foundation scholarships programs caused by these rules is not balanced by any corresponding benefit. Congress could readily simplify these rules without creating a potential for abuses, such as by enacting specific criteria to be satisfied by scholarship and loan programs. We would welcome the opportunity to work with the Committee staff on such a simplification.

Second, the expenditure responsibility rules—that is, the detailed recordkeeping and reporting requirements applicable to foundation grants to non-public charities—are more complex and burdensome than required to accomplish Congressional objectives. An important role of foundations is to provide "seed money" grants to promising new charitable endeavors. However, since such new organizations often have not qualified as public charities they can receive foundation grants only if the foundations comply with the expenditure responsibility rules. To comply, a foundation must (1) conduct a pre-grant investigation of the grantee, (2) enter into a detailed written grant agreement, (3) obtain at least annual reports from the grantee concerning the use of the grant funds, and (4) file annual reports with the IRS concerning the grant. Faced with these rules, many foundations, particularly small foundations which generally have no staff, simply do not make expenditure responsibility grants. This means that any needed, worthwhile human service organizations and similar new charitable projects simply cannot obtain foundation support. We believe that simplification of these rules could encourage many more foundations to make worthwhile grants to new organizations while maintaining entirely adequate safeguards against a misuse of foundation funds.

A third, related problem arises from limitations imposed by current regulations on the ability of foundations to rely on official IRS determinations as to a grantee's public charity status. In many common situations, a foundation seeking to determine whether a grantee is a public charity—and thus whether the foundation must exercise expenditure responsibility—cannot rely on an IRS determination of the grantee's status. Instead, it must make its own detailed investigation to determine whether its grant may cause the grantee to lose its tax-qualified status. This requirement imposes a substantial administrative burden on foundations. It constitutes a significant deterrent to grants to other than well-established public charities, and, most importantly, reduces the number of "seed money" grants by foundations to new, innovative and locally-motivated charitable programs. Congress should consider eliminating these problems by allowing foundations of rely on IRS determinations to a grantee's public charity status.

B. The self-dealing rules

The self-dealing provisions of the 1969 Act impose stringent restrictions on the economic relationships between foundations and related parties. The general structure of these prohibitions should be preserved. Congress should, however, consider simplification of two important aspects of these rules. Under current law, all lineal descendants—however remote—of a substantial contributor to a foundation are disqualified persons subject to the self-dealing rules. Accordingly, foundations must keep track of all such descendants—even where the donor is no longer living and the descendants have no involvement with the foundation—in order to avoid inadvertent violations of the selfdealing rules. This requirement imposes a substantial and unnecessary administrative burden on foundations, one which increases with each passing generation. Narrowing the definition of "family member" to include only children and grandchildren of substantial contributors would alleviate the burden.

In addition, current rules should be changed to allow a disqualified person to provide goods, services or facilities to a private foundation where the disqualified person can demonstrate to the IRS in advance that the foundation will thereby be able to obtain the goods, services, or facilities at significantly less cost than would be incurred in a purchase or lease from a third person. The Internal Revenue Code now allows a foundation to pay reasonable compensation to disqualified persons for needed personal services. Extending this concept to allow disqualified persons to provide reduced cost goods, services or facilities to foundations would allow foundations to realize important benefits without creating a potential for abuse.

C. The excess business holdings rules

The business holdings provisions of the 1969 Act establish a general limit of 20 percent on the combined holdings in a business enterprise by a foundation and disqualified persons. Under special transition rules, higher limits apply to pre-1969 holdings. Most foundations have fully complied with these requirements, generally by disposing of potential excess business holdings through sales, exchanges, or gifts. Because most foundations with potential excess business holdings have thus been able to comply, we doubt that a fundamental revision of the excess business holdings rules is needed. There is concern, however, about the adverse effect of these restrictions on the creation of new foundations.

Extending the period of time available to a foundation for disposing of newly-acquired business holdings, such as those left to the foundation by bequest, would facilitate gifts of business interests to foundations without changing the current level of permitted holdings. Current law gives a foundation five years to dispose of such new holdings. Some longer period, such as ten or fifteen years, may be more reasonable in light of the length of business cycles and the desirability of allowing foundations adequate time to sell at the point in the business cycle when the price most favorable to charity can be obtained. Another justification for an extension of the disposition period for newly-acquired holdings would be to encourage individuals to begin contributing closely-held business interests to foundations during their lifetimes. Five years is probably an inadequate period for effective business and estate planning for such persons.

There may be merit in providing to the Commissioner the discretion to grant limited extensions of time for specific unusual problem cases, either those already existing or those arising from future gifts or bequests to foundations.

Finally, I would like to point out three detailed technical changes in the business holdings rules that should be considered: first, simplifying the "pass through" rules of section 4943(d)(1) under which a foundation may be treated as the owner of stock owned by a business in which the foundation has an interest; second, simplifying the so-called "downward rachet" and "substituted percentage" rules by, for example, providing that the rules do not apply to small changes in a foundation's percentage holdings attributable to stock issuances and redemptions and third, narrowing the definition of "family members," so that foundations are no longer required to monitor the stock holdings of remote descendants of substantial contributors.

D. Inadvertent violations

Current law imposes an automatic first level penalty tax on foundations which violate the restrictions on taxable, expenditures, excess business holdings, and certain other provisions of the private foundation rules. Because of the complexity of these rules inadvertent violations occasionally occur. In addition, current law does not provide any "grace period" for an organization which, due to a change in funding sources or for some other reason, ceases to qualify as a public charity and becomes instantly subject to all of the private foundation rules. Imposing a penalty tax on foundations for such inadvertent or unanticipated violations does not promote increased compliance, and, instead, simply removes from foundations funds which would otherwise have been available for charitable programs. Moreover, the automatic nature of these initial penalty taxes and their continued accumulation during the period of audit and administrative review by the IRS forces many foundations to bypass administrative review of a questionable situation and instead proceed directly to litigation.

Accordingly, the Section recommends that the Commissioner be given authority to abate the first-level penalty tax imposed on foundations where the violation is inadvertent or is the result of an unanticipated change of status and is corrected within the statutory correction period, and that Congress remove the accumulation of these taxes for that period which will allow an orderly and thorough administrative review by the IRS.

II. CONTRIBUTIONS TO FOUNDATIONS

Congress could take a major step toward simplification of the Internal Revenue Code by reducing the overwhelming complexity of section 170, the provision of the Code which regulates the deductibility of contributions to charity. Current law establishes three separate limits on the percentage of one's income which can be deducted for charitable gifts depending on the character of the donee and the nature of the donated property. Extremely complex rules govern the interaction of these percentage limits, and contributions to private foundations are subject to the most stringent limitations. Current law also provides different rules, depending on whether the donee is a public charity or a private foundation, as to the portion of the value of donated property which can be claimed as a charitable deduction. If the donee is a public charity the full fair market value is generally deductible; if the donee is a private foundation the value of the deduction is reduced very significantly from that amount. Thus, there are almost insurmountable disincentives to lifetime contributions to foundations.

As section 170 is presently structured, its very complexity is an inhibition to contributions to charity. Moreover, the less favored status of foundations obviously inhibits gifts to foundations. The Tax Section has long been concerned with this problem, and 10 years ago recommended, as a partial solution, the establishment of uniform percentage limitations and carryover rules for all charitable contributions. Congress should seriously consider simplification of section 170. Uniform limitations and carryover rules for all charitable contributions, including charitable contributions to private foundations, should also be established. Because the private foundation rules provide an effective safeguard against foundations misconduct, there is simply no need for the more restrictive deduction rules which currently apply to gifts to foundations.

III. THE PUBLIC SUPPORT RULES

Revisions are needed in the public support rules of sections 509(a)(1) and (a)(2) which, for many charities, determine whether the organization will be treated as a public charity or a private foundation. The existing rules inappropriately classify as private foundations many organizations which are directly accountable to the public and for which the detailed restrictions of the private foundation rules are thus unnecessary.

Two aspects of the existing public support rules make it unnecessarily difficult for many new organizations to qualify as public charities. First, in determining whether an organization has received the required percentage of its total support from qualifying "public sources," current rules include large gifts and grants in the base against which the public support level is measured unless a relatively narrow "unusual grant" exception applies. As a result, a new organization may be effectively precluded from public charity status if it receives a single large gift or grant. Broadening the unusual grant exception would signficantly alleviate this problem.

Second, current rules allow new organizations only five years to develop the required level of public support in order to avoid private foundation status. Many worthwhile new organizations simply cannot attract the required public recognition of, and support for, their programs within this five-year period. Extension of the five-year period to perhaps ten or twelve years should be considered.

Congress should also consider relaxing the existing rule which bars public charity status under section 509(a)(2) if an organization receives more than one-third of its total support from investment income. This rule poses a particular problem for numerous museums, libraries, and similar organizations which operate fully as public charities but which have been fortunate enough to receive significant endowment funds from their supporters. To avoid private foundation status, such organizations must either limit their investment income or compete with other charities for additional current contributions, or even pursue both courses. These unforeseen and undesirable results of current law could be alleviated by increasing the level of permitted investment income or by even eliminating the investment income limitation for organizations which by the nature of their operations actively carry out a charitable program commensurate with their financial resources.

Beyond these technical changes to the existing Code provisions, we would encourage the Congress to make a careful review of the extent to which the private foundation definitions unintentionally sweep into the complexity of the 1969 legislation those small, locally-supported organizations which almost no layman would consider a private foundation. Our members are concerned over the ability of such organizations as urban redevelopment groups, historic preservation societies and social relief agencies to obtain and maintain status as public charities. These organizations do not hold endowments for the purpose of generating income to make grants; rather, they are usually directly focused upon specific community concerns which a relatively small group of volunteers decides should be given attention. Although we can produce no statistics to support our views, we believe that the difficulties under current law of obtaining and preserving public charity status for such groups fosters an attitude of "let government solve the problem" or "let the church do it." This is an unfortunate consequence of complexity, we believe, and we would welcome the opportunity to explore with the staff means of expanding the definition of "public charity" without jeopardizing the sorts of protections of the public interest which are contained in the 1969 Act.

CONCLUSION

The experience of our members suggests that the private foundation provisions of the 1969 Tax Reform Act have effectively prevented the foundation misconduct at which they were directed. Accordingly, we believe that the basic framework of these rules should remain intact. However, as discussed above, important aspects of the current rules are overly complex and unnecessarily restrictive. These aspects of the rules strongly discourage foundations from supporting many worthwhile charitable activities and deter additional contributions to foundations. We believe that Congress should carefully consider appropriate changes in the private foundation rules to eliminate these barriers to the charitable activities of private foundations.

Chairman RANGEL. I want to publicly thank the American Bar Association for being of tremendous assistance to this subcommittee chairman, as well as the full committee in terms of writing legislation.

It is so helpful to have this support. The staff will work with you to see what specific ideas you have about recommendations to be made to the full committee.

My only question is, there has been a general feeling that a lot of the private foundations' work is not publicly known to grantees either what they do or what their interests are, and, of course, that grassroot types of organizations don't have access to the communication lines that foundation-type people, grantors, and grantees have.

Has that been your observation or your association's observation?

Mr. AIDINOFF. Let me answer that individually. I am a trustee of a relatively small foundation which is not well known, and I can say that organizations which I have had no involvement with, and which I did not know existed in the New York area, find their way to this relatively unknown foundation which——

Chairman **Rangel**. Do you put out an annual report?

Mr. **Aidinoff**. The only filings it has are the filings required by the statute and by the New York State attorney general. But we are listed in the Directory of Foundations, and a surprising number of worthwhile New York projects find their way to us.

Chairman **Rangel**. Couldn't you say that should be a minimum, at least to be listed in the Directory of Foundations?

Mr. **Aidinoff**. I think that it would be worthwhile to require more information and more listings. I think a lot of the listing is already there, and with a little bit of effort grantees can find the information.

I think perhaps what we need is more education of some of the proposed grantees.

Chairman **Rangel**. You probably are right except there was a lot of testimony given to the contrary.

Mr. Conable?

Mr. **Conable**. I have no questions, Mr. Chairman. I would like to say I appreciate your general views as expressed in your testimony. I saw a good deal of support for the legislative proposal that is now pending before the committee, and, of course, I like to hear that.

Thank you.

Mr. **Aidinoff**. Thank you, sir.

Chairman **Rangel**. Thank you very much. The subcommittee will stay in touch with the association.

We will now recess for 10 minutes so the Members can vote. When we return, we will hear from John S. Nolan, representing the Robert A. Welch Foundation.

Chairman **Rangel**. The subcommittee will resume.

We are prepared to take the testimony of Jack Nolan, counsel to the Robert A. Welch Foundation.

STATEMENT OF JOHN S. NOLAN, COUNSEL, THE ROBERT A. WELCH FOUNDATION

Mr. **Nolan**. Thank you, Mr. Chairman.

I am J. S. Nolan, of Miller & Chevalier, Chartered, Washington, D.C. I appear today for the Robert A. Welch Foundation, a private operating foundation in Houston, Tex.

In addition to my written statement, I have a brief letter that I would like to submit for the record to supplement that statement, with the chairman's permission.

Chairman **Rangel**. Without objection.

[The information follows:]

Miller & Chevalier,
Washington, D.C., June 30, 1983.

Hon. Charles B. Rangel,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, House of Representatives, Washington, D.C.

Dear Chairman Rangel: The Robert A. Welch Foundation was formed to promote basic chemical research by awarding grants to individual faculty members of schools and universities in the State of Texas and to promote and disseminate the results of such research. In my testimony before this Subcommittee, I have outlined some of the problems that the Foundation faces in complying with the strict and inflexible rules set forth in the Internal Revenue Code and Treasury Regulations that are applicable to private operating foundations such as the Welch Foundation. One particular problem requires further elaboration—the inability of the Foundation under present rules, except to a very limited extent, to make grants to smaller schools and supply research equipment and supplies to its grantees.

Present rules allow the Foundation to make up to fifteen percent of its qualifying distributions for purposes other than directly for the active conduct of activities constituting its exempt purpose. As a practical matter, these rules mean that the Foundation must place severe limitations on its direct grants to schools and universities and on its purchases of equipment for schools and universities.

The Welch Foundation program was conceived in the spirit of promoting basic chemical research while spending a minimum amount on buildings, recruitment and administrative staff. This was and is done by promoting and supervising the research through using the existing buildings and administrative staffs of existing universities. In today's economy, those schools cannot supply out of their general funds the equipment and materials that are necessary for the teaching of chemistry students who are not directly involved in Foundation grants.

The Welch Foundation seeks to make direct appropriations to universities for the purchase of specific chemical equipment which would be used for the training of those studying chemistry but which would not be used necessarily within the research program of a Welch Foundation grantee. For example, a Welch Foundation grantee may include a microscope in his request for funds. The Foundation may approve the purchase of the microscope. The purchase of the microscope, however, only helps the research of that particular grantee and does not help in supplying the need generally of the chemistry department of that school for the training of chemical undergraduates.

Furthermore, a relatively small university may not be able to attract a chemist who can suggest a project that would justify a Welch Foundation grant. Yet, that small university has the potential to develop undergraduate chemists who can become the research associates for distinguished grantees at larger institutions. The Welch Foundation seeks to help those small schools in their programs by making direct grants to the schools.

The fifteen percent limitation on grants such as those described in this letter does not allow the Welch Foundation to respond adequately to the needs of the small schools. As the law is presently drafted and interpreted, the Foundation must confine most of its grant-making activities to recognized faculty members at the larger, better-known universities.

Present law should be changed to raise the fifteen percent limitation or to allow direct grants to schools and universities without regard to any limitations.

Sincerely,

JOHN S. NOLAN.

Mr. NOLAN. The Welch Foundation was created for the purpose of promoting basic chemical research. Each year the foundation awards and renews a substantial number of grants to individual applicants who are members of the faculties of schools and universities located in the State of Texas. The results of the research of the grantees are published by the foundation in scientific journals and in the annual reports of the foundation.

In addition, an annual 3-day conference is held by the foundation to foster and encourage scientific research and knowledge in the area of chemistry. The meeting is now recognized as one of the leading scientific conferences in the world.

In order to maintain its status as a private operating foundation, the Welch Foundation is required by the Internal Revenue Code to make substantially all of its qualifying distributions each year directly for the active conduct of the activities constituting its exempt purpose. The Treasury regulations define substantially all to mean 85 percent. Thus, 85 percent of the foundation's qualifying distributions must be made directly for the active conduct of the activities constituting the foundation's exempt purpose. Outright grants to individual grantees do not qualify under the phrase directly for the active conduct of the exempt purposes unless the foundation maintains significant involvement in the funded programs. This means that the recipients of grants must attend classes, seminars, or conferences sponsored or conducted by the foundation, or engage in research under the general direction and supervision of the foundation.

The Welch Foundation has been able to comply with these various tests, but only with unnecessary inhibitions on its activities. Compliance with these tests is often not the most effective way of accomplishing the research and educational purposes of the foundation. The foundation can make direct grants, for example, to researchers at the University of Texas because such individuals have the ability and national reputation to participate in the foundation's programs, and their work is so widely recognized that it can readily be published in foundation-sponsored journals. Thus, the foundation can maintain the required significant involvement with these well-established grantees.

Where, however, the beneficiary organization is a high school or a small college, it is much more difficult for the foundation to maintain the significant involvement required by the Treasury regulations. These grants to smaller institutions, however, are just as important in directly promoting the foundation's purpose because they serve to create a larger pool of chemical researchers. Indeed, the encouragement of younger and less well-known individuals to pursue a career in basic chemistry may, in the long run, fulfill the foundation's objectives even more importantly than any other activity of the foundation.

Another serious obstacle to accomplishment of the Welch Foundation's objectives is that any equipment that is purchased by the foundation for a grantee must be dedicated to and used only in research funded by the foundation. Thus, if a grantee needs a microscope, the foundation cannot buy his university a microscope which can be shared with other researchers. This rule obviously subverts the furtherance of the foundation's purposes.

The foundation has also found that its purposes can be effectively accomplished by endowing professorship chairs. Such endowments are expensive, often costing $1 million each, yet endowments to outstanding professors in the field of chemistry contribute substantially to furthering basic chemical research. The endowments, however, are absolute gifts, and there is no way that the foundation, in making such grants, can maintain the significant involvement over the professorships required by the Treasury regulations.

Mr. Chairman, I remember well the development of these provisions in the Tax Reform Act of 1969. I was personally involved in that process. The statutory provisions and the regulations were very tightly drawn. Fourteen years' experience with the operation of foundations since that time has taught us that in some limited areas, the restrictions imposed were unnecessarily severe. This is one of those areas. The outstanding work of the Welch Foundation in chemical research and in sponsoring the education of individuals in the field of chemistry demonstrates that there would be no abuse of the charitable exemption in revising the requirements to the limited extent we propose.

The foundation asks the committee to consider amending the statute with respect to operating foundations. We submit that a foundation should qualify as an operating foundation if its primary exempt purpose is to support research at educational institutions, and if substantially all of its qualifying distributions are made directly for the active conduct of its exempt activities, which active conduct may include grants to public and private tax-exempt educational organizations in furtherance of its primary exempt purpose. Alternatively, at the very least, we urge that substantially all requirement, which is now defined by regulations to mean 85 percent, should be reduced to 75 percent. We would work with this subcommittee and its staff to develop appropriate statutory language.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF JOHN S. NOLAN ON BEHALF OF THE ROBERT A. WELCH FOUNDATION

My name is John S. Nolan. I am a member of the law firm of Miller & Chevalier, Chartered, Washington, D.C. I am appearing before you today on behalf of the Robert A. Welch Foundation (the "Foundation"), a private operating foundation located in Houston, Texas.

The Foundation has requested this opportunity to testify to urge modification of the rules defining a private operating foundation, with which the Foundation must comply, because the rules operate to undercut the ability of the Foundation to accomplish the purposes for which it was formed. We propose changes in the Internation Revenue Code which will provide more flexibility for the Foundation (and other similarly situated operating foundations) to accomplish its exempt purposes, but which at the same time are fully consistent with the objectives of the Congress to eliminate tax abuse in this area.

THE BASIC ACTIVITIES OF THE FOUNDATION

The Foundation was created by a testimony gift for the purpose of promoting basic chemical research. It is controlled by five individual trustees, who are unrelated to its creator. Each year the Foundation awards and renews a substantial number of grants to individual applicants who are members of the faculties of schools and universities located in the State of Texas. Such applicants are required to present a detailed request for chemical research funds, stating the objectives thereof, through a scientific advisory board which acts as consultant to the trustees. Coordination between the applicants, prior grantees, the scientific advisory board, and the trustees is performed by an employee of the Foundation. The members of the scientific advisory board, as well as the coordinating employee of the Foundation, are distinguished scientists with international reputations unrelated to the creator and each is paid remuneration for services actually performed.

Not only does the scientific advisory board screen the applicants and their requests, but the board also supervises the results of the work of the grantees with respect to the accomplishments of each through the annual grading of the work of each grantee and publications of such work. If an unfavorable grade results (as often happens), the applicant who normally would have a multi-year grant is cut off from further grant funds, or the term of the grant is reduced. The trustees also check the reports of the grantees for error.

The results of the research of the grantees are published in scientific journals. Abstracts of the research of the grantees appear in the annual reports of the Foundation. The trustees do not permit changes in the budgets for the grants without review by the scientific advisory board or the trustees and approval by the trustees.

In addition, an annual three day conference is held by the Foundation on a broad chemical research subject, which conference is planned and chaired by the scientific advisory board. The relevant grantees and other interested parties from all over the world attend in very substantial numbers. The proceedings of the conference are published and widely distributed by the Foundation. At the conference lectures are given, and group discussions are led, by scholars who are paid a fee and expenses. The purpose of the conference is to foster and encourage scientific research and knowledge in the area of chemistry. The meeting is now recognized as one of the leading scientific conferences in the world.

Members of the board of trustees and the scientific coordinator of the Foundation annually visit more than 75 percent of all grantees to ascertain the progress in the program of the grantees, and they also confer with prospective grantees.

THE IMPACT OF PRESENT LAW

In order to maintain its status as a private operating foundation, the Foundation is required by section 4942(j)(3) of the Internal Revenue Code to make qualifying distributions each year "directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated" in an amount equal to "substantially all" of the lesser of its adjusted net income or its minimum investment return. In addition, the Foundation, because its qualifying distributions exceed its minimum investment return, must make "substantially all" of its qualifying distributions directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated.

The Treasury regulations have defined "substantially all" to mean 85 percent, although there appears to be no support in the legislation or the legislative history for any particular number. Thus, 85 percent of the Foundation's qualifying distributions must be directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated. There is a problem with this latter phrase "directly for the active conduct" of the exempt purposes. Outright grants to individual or institutional grantees do not qualify under that phrase. Individual grants can qualify but only if the Foundation maintains "significant involvement" in the funded programs. This means, under Treasury regulations, that the Foundation must have developed an expertise in a particular discipline and must maintain a salaried staff to supervise its programs and activities. The recipients of grants must attend classes, seminars, or conferences sponsored or conducted by the Foundation, or engage in research under the general direction and supervision of the Foundation.

The basic activities of the Foundation described earlier in this testimony are within these various tests imposed by the Internal Revenue Code and the Regulations. Eighty-five percent of the Foundation's qualifying distributions have been made directly for the active conduct of the Foundation's exempt purposes; grants to individual grantees have been made with the required "significant involvement." The problem with which the Foundation has been confronted is that compliance with these tests is often not the most effective way of accomplishing the goals of the Foundation.

The Foundation can easily make direct grants, for example, to researchers at the University of Texas because such individuals have the ability and national reputation to participate in the Foundation's programs and publish in Foundation-sponsored journals. Thus, the Foundation can maintain the required significant involvement with these grantees.

However, where the beneficiary organization is a high school or a small college, it is much harder for the Foundation to maintain the "significant involvement" required by the Treasury Regulations (§ 53.4942(b)-1(b)(2)(i)). These beneficiaries may need equipment for basic training in chemistry. They are not sufficiently sophisticated to deliver papers at Foundation-sponsored conferences. Nonetheless, these grants directly promote the Foundation's purpose by helping to create a larger pool of chemical researchers. Indeed, the encouragement of younger and less well-known individuals to pursue a career in basic chemistry may in the long run fulfill the Foundation's objectives more than any other method.

The Foundation has also found that its purposes can be effectively accomplished by endowing professorship chairs. Such endowments are expensive, often costing $1,000,000 each, yet endowments to outstanding professors in the field of chemistry contribute substantially to furthering basic chemical research. The endowments, however, are absolute gifts, and do not allow the Foundation to maintain the significant involvement over the professorships required by the statute and regulations.

Consequently, the Foundation asks the Committee to consider modifying section 4942(j) of the Internal Revenue Code to allow the Foundation the flexibility needed to accomplish its tax-exempt objectives in a more effective manner. We believe that the public interest would be better served by allowing the Foundation to fund basic chemical research projects wherever either the Foundation or a public or private section 501(c)(3) tax-exempt organization is in a position to give general supervision to the expenditures of the funds. We believe also that the Foundation should be able to give money directly to public and private schools and universities to endow chairs, to provide a pool of scholarship funds, or to provide equipment to be used in basic chemical research.

We therefore ask that the statute be amended so that a foundation whose primary exempt purpose is to support research at educational institutions can qualify as a private operating foundation if substantially all of its qualifying distributions are made directly for the active conduct of its exempt activities, which active conduct may include grants to public and private tax-exempt educational organizations not to exceed some fixed percentage, such as 25 percent, of total qualifying distributions.

Alternatively, the "substantially all" requirement, which is now defined by regulations to mean 8 percent, could be defined to mean 75 percent. A broader definition of an exempt-purpose qualifying distribution could also be drafted, which among other things, could incude reasonable outright grants to individuals.

Any of these alternatives could provide the flexibility needed by the Foundation without allowing abuse of the statutory purposes, and we would be happy to work with this Subcommittee and its staff to develop appropriate statutory language.

Chairman RANGEL. Thank you, Mr. Nolan.

What is your objection to the distinction between operating and nonoperating foundations?

Mr. NOLAN. What is my objection to it? I don't have an objection to the distinction as such. There is a reason for the distinction, and it is a very sound reason. It is just that in 1969 in defining an operating foundation, without knowing fully what the scope of the problem was, the rules were drawn too tightly. Those rules were drawn primarily in regulations, but in pursuance of the statute, and I think that 14 years' experience has taught us that they were too tightly drawn.

Chairman RANGEL. What would make you think that with the activities you are doing now, that you should still be considered an operating foundation?

Mr. NOLAN. Because we are very actively involved in the process of promoting the chemical research. The Welch Foundation, itself, is not simply a grant-making organization. It itself is directly involved in carrying out its exempt purpose of chemical research. It sponsors this major 15-day conference every year, publishes the results of the chemical research work done by the persons that it supports, and otherwise is very much actively involved in the process.

Chairman RANGEL. But you are less active now than you used to be in being involved?

Mr. NOLAN. No, we are still very active. It is just that there is not enough leeway in making grants consistent with our purpose in the existing 85-percent test.

Chairman RANGEL. There is, of course, a concern you have with the different way we treat donations to operating as opposed to nonoperating foundations. Aren't you?

Mr. NOLAN. We are concerned primarily with the definition of operating foundation which, in fact, allows an institution that is actively involved in promoting its exempt purposes somewhat more leeway in the extent to which it must——

Chairman RANGEL. If there was no leeway, how does it adversely affect you now?

Mr. NOLAN. It prevents us from making grants to individuals in smaller colleges and universities, because it is more difficult to publish the results of their research. It is not recognized as well as the work of the well-known researchers, say, at the larger universities.

We will still be involved in supporting and actively promoting the work of the less well-known individuals at these smaller schools, but the present regulations are too severe in limiting our activities in doing that.

Chairman **Rangel**. Limiting your activities in terms of oversight and obligations to review the work being done by the grantee?

Mr. **Nolan**. Yes. The organization is very actively involved in day-to-day oversight of the work of its researchers.

Chairman **Rangel**. How much of this research concerns the use of the related products of the Welch Company? Are there any?

Mr. **Nolan**. I am not aware that there is any significant involvement in that type of research. The foundation is primarily involved in basic chemical research, not applied research.

Chairman **Rangel**. Mr. Conable?

Mr. **Conable**. It is nice to have Mr. Nolan before the committee. He has been here many times in many capacities.

Irrespective of your representation of the Welch Foundation, do you have any suggestions for ways in which we can move toward a more simplified foundation rule or rules? You are dealing with a specific problem you have in that foundation, but you are well aware of the distinctions between operating, private, and community foundations.

It always seemed to me we have an unnecessarily complex set of differentiations there. I acknowledge they are all based on some rational distinction between the work of the various entities, but do you see any easy ways in which we can simplify?

Mr. **Nolan**. I don't see any easy ways, but I would repeat the suggestion I made in my testimony, and that is we have learned a great deal about the operation of foundations over the last 14 years, things we did not know in 1969, and I think that the 1969 legislation was drawn so severely that careful review of some of those restrictions in light of actual problems that have developed is certainly in order, and perhaps some changes in the rules are necessary. I would urge the subcommittee to look at it in that light.

The 1969 legislation was done without sufficient background of experience of the type we have had in the last 14 or 15 years in the activities of foundations.

Mr. **Conable**. Thank you, Mr. Chairman.

Chairman **Rangel**. We want you to know that we appreciate your recommendations. We hope that you give us more specific recommendations, taking advantage of your years of experience in this area regarding the classifications that you are concerned with.

Mr. **Nolan**. Thank you.

Chairman **Rangel**. The subcommittee is running far behind schedule, so I am going to ask staff to start operating the lightsystem, which will give us a clear indication of when your 5 minutes have expired.

We will call the panel next of Dr. William Alderson, director, the Strong Museum, Rochester, N.Y.; Dr. Nancy Melton, associate director, the Mariners' Museum, Newport News, Va. and Thomas W. Leavitt, Director, the Merrimack Valley Textile Museum, North Andover, Mass.

Mr. **Conable**. I would like to particularly welcome Dr. Alderson, who is head of a very important new institution, the Strong

Museum, in our area, and thank him for his work and public interest.

Chairman RANGEL. We thank all the panelists, and we hope you recognize that the statements you have taken time to prepare for this subcommittee will be entered into the record in their entirety.

In the 5 minutes allotted, you can highlight the statement or add to it. Thank you very much.

The Chair recognizes Mr. Alderson, from Rochester.

STATEMENT OF WILLIAM T. ALDERSON, DIRECTOR, THE STRONG MUSEUM, ROCHESTER, N.Y., ALSO ON BEHALF OF MARINERS' MUSEUM, NEWPORT NEWS, VA., AND MERRIMACK VALLEY TEXTILE MUSEUM, NORTH ANDOVER, MASS.

Mr. ALDERSON. Thank you, Mr. Chairman.

I speak on behalf of all three of our institutions, and I will try to summarize the testimony which we have previously submitted.

The principal focus of our statement is the effect of the 10 percent public support test set forth in the regulations under the Tax Reform Act of 1969. We will also, however, discuss the impact of the 2-percent excise tax and the expenditure responsibility requirements on our operations.

We want to register, also, our strong support for H.R. 2183, which was introduced by Congressman Shannon, Congressman Conable, and Congressman Gephardt. That bill provides that certain museums and libraries that meet criteria of public accessibility and accountability shall be treated as public charities whether or not they meet the 10-percent public support test.

Mariners, Strong, and Textile are all museums with substantial collections and professional staffs. Each is open to the public during easily accessible hours, charges a nominal fee and is visited annually by thousands of people.

Each of the museums is also fortunate to be the beneficiary of a trust, or trusts, that earns a high return. However, the income from these trusts has caused, in the case of Strong, or threatens to cause, in the case of Mariners and Textile, the ratio of public support to decline below the 10 percent public support requirement.

Thus Strong, and perhaps, Mariners and Textile can be treated as private operating foundations despite the extensive public involvement in their functions.

Moreover, in the case of Mariners and Strong, the income received from the supporting trusts is required, under the trust terms, to be paid to the respective museums, and the trustees do not serve on the respective museum boards and the families that established the trusts do not have any connection with the museums. The effect of the 10-percent public support requirement, therefore, is to subject these museums to restrictions designed to prevent abuse even though the potential for abuse is practically nonexistent.

PRIVATE FOUNDATION CLASSIFICATION

The adoption of the private foundation rules was based upon certain assumptions about the likelihood of abuses in the creation and operation of tax-exempt organizations.

For example, it was assumed that certain organizations such as those described in code 170 (b)(1)(A)(i-v) were not likely to be subject to abuse based upon historical experience.

Other organizations described in code 170(b)(1)(A) (vi) and (viii) were assumed to have little abuse potential if they were dependent upon wide public support, conducted an active charitable program, as compared to a passive program of issuing grants, and were operated by broad based governing bodies.

By contrast, the characteristics of narrow support and governance were assumed to encourage such abuses as self-dealing and an inadequate level of payouts.

The organizations described in code 170(b)(1)(A)(i-v), as not likely to be subject to abuse, are institutions such as churches, educational organizations and hospitals that are public charities provided they meet certain standards of accessibility, types of services, level of public involvement and professional staff.

All other organizations, in order to be classified as a public charity, must receive financial support from public sources equal to one-third of total support or, if public support is less than one-third, satisfy a facts-and-circumstances test established in the regulations.

The facts-and-circumstances test requires an organization to receive 10 percent of its financial support from governmental or other public sources and to meet certain other criteria.

A private foundation may be further classified as a private operating foundation. A private operating foundation is an organization that actively conducts programs relating to its tax-exempt purpose. In general, a private operating foundation is subject to the same restrictions as a private foundation except that individuals may contribute up to 50 percent of adjusted gross income to a private operating foundation whereas a 20-percent ceiling applies to contributions to private foundations.

To the extent that Strong, Mariners, and Textile are not public charities, each would be classified as a private operating foundation.

All private foundations, including private operating foundations, are subject to a series of requirements and restrictions not imposed upon public charities.

These restrictions include prohibitions on self-dealing between the foundation and interested parties, limits on business holdings, and limits upon types of investment.

Each of these restrictions is intended to assure that interested persons do not use the foundation for their own purposes and that the foundation actively pursues its tax-exempt purpose.

We do not object to any of these requirements. In fact, our museums scrupulously observe them. Unfortunately, classification as a private operating foundation also results in two additional restrictions:

1. Under code 4945, a private foundation that wants to provide a grant to a private operating foundation must exercise expenditure responsibility with respect to its grant.

This recordkeeping burden often causes grant-making foundations to be more willing to give to a public charity than to another foundation.

2. Under code 4940, an excise tax of 2 percent of net investment income is imposed upon each private operating foundation. By contrast, investment income earned by public charities is not subject to tax. Thus funds which could otherwise be spent on museum programs are lost.

OPERATIONAL PROBLEMS

The issues of expenditure responsibility and the 2-percent excise tax are to be considered in detail by other witnesses and we will not discuss them in depth here. Our point is not the general propriety of these restrictions but their specific application to organizations that have little or no potential for abuse.

The imposition of expenditure responsibility upon foundation grantors to the museums vastly increases the recordkeeping burden on the grantor foundation and is a substantial disincentive to providing grants to a private foundation. Thus, museums like Mariners, Strong, and Textile which meet high standards of public accessibility and accountability are placed at a disadvantage with respect to other public charitable institutions.

In addition, the 2-percent excise tax imposes additional restrictions on already tight museum budgets. In the last 2 years, funding for museum programs under the National Endowment for the Humanities has declined by 27.3 percent, under the National Endowment for the Arts by 33.6 percent and under the Institute of Museum Services by 12.2 percent.

In the face of such sharp reductions in Government grants, payment of an excise tax is particularly onerous.

Budgets are further strained when museums that are close to the 10-percent public support requirement are forced to hire professional fund-raisers for the purpose of exceeding the threshold.

The public support requirement also works to penalize the museums that have had the good fortune to be the beneficiaries of successful endowments since the income of the trust available for distribution increases relative to the amount of public support.

We suggest that it would be fairer and more efficient if the law was neutral with respect to such fortuitous circumstances that are out of the control of the organization.

LEGISLATIVE SOLUTION—H.R. 2183

Congress relied on basic common sense in carving out certain organizations with a particular structure or sphere of activity from the private foundation rules. This practical approach should be extended to museums such as Mariners, Strong and Textile which share the characteristics of the excluded institutions.

The only source of relief available to such museums is statutory since current law clearly prescribes that publicly supported organizations in general, and certain other specific types of organizations, are the sole organizations excluded from the private foundation rules.

We recognize that rules are necessary to safeguard against abuses by tightly controlled tax-exempt organizations.

H.R. 2183 suggests, however, that certain museums meeting strict standards designed to assure public involvement and accountability—like the standards applied to churches, schools, and hospitals—be excluded from the private foundation rules.

The standards that would apply to museums include the following:

First, the museum must be a permanent institution which is exempt from tax under code 501(c)(3);

Second, at least 25 percent of the governing body of the museum must consist of community leaders and/or local public officials;

Third, the museum must employ a professional staff and own, possess, and care for tangible objects; and

Fourth, the museum must conduct regular and continuous exhibits which are open to the public.

These standards are substantially similar to the tests already contained in the law for excluding schools and hospitals from the private foundation rules. As with schools, the employment of a staff and the carrying out of an active program available to the public are required.

As with hospitals, permanent and continuous activity is required.

Moreover, a museum must include a segment of public control not required of churches, schools, or hospitals.

We submit that museums satisfying these standards are no more likely to suffer the abuses which caused Congress to enact the private foundation rules than organizations excluded under current law.

In fact, we contend that a requirement for 25-percent public representation on the board provides greater assurances against abuse than a 10-percent public support requirement.

The current 10-percent public support requirement actually allows a board to function with impunity since all outsiders can be excluded. A public representation requirement causes all the decisions of the organization to be scrutinized by disinterested parties.

It is our belief that a continuous presence of outsiders on the board of a museum is a better safeguard against abuse than a one-time contribution.

ALTERNATIVE LEGISLATIVE SOLUTIONS

We also support two alternatives to H.R. 2183 for the consideration of the subcommittee.

Under the first alternative, the only museums to be treated as public charities would be those that, in addition to the H.R. 2183 requirements, meet the following requirements:

First, the collection must meet a minimum percentage in relation to the assets of the museum other than the collection.

The percentage could be lower if the assets are valued at their basis or higher if valued at their fair market value.

Second, the annual expenses of the museum must meet a minimum percentage of the museum's annual income other than contributions to its collection.

The purpose of these requirements is to assure that museum income and assets are used for exempt purposes and cannot be diverted for other purposes.

Under the second alternative, museums meeting the requirements of H.R. 2183 would still be private operating foundations but would not be subject to the 2-percent excise tax and foundation donors would not be required to exercise expenditure responsibility.

Museums would still be subject to the other excise tax penalties for self-dealing, excess business holdings, and improper investments.

Thus, the practical effect would be to curtail the possible abuses without imposing unnecessary punitive measures.

We are aware that in the last few years grants from Federal and State foundations have declined and these reductions in grant income are causing hardship to museums which will create additional difficulty.

I know that the time is short. I will cut short at this point, but emphasize that we feel that the museums that are fortunate enough to have endowments that will provide a substantial portion of their support should be treated in the same way as museums which are performing exactly the same kind of service to the public and yet are fortunate enough to have a larger portion of their total support come from public contributions.

Thank you.

Chairman **Rangel**. Of course, you don't have a problem with the provisions in existing law relating to self-dealing and inadequate payouts. So that you are not asking to eliminate them, are you?

Mr. **Alderson**. No, sir.

Chairman **Rangel**. You are concerned with the provisions dealing with expenditure responsibility and the tax on investment income?

Mr. **Alderson**. That is correct.

Mr. **Conable**. May I ask a question of Dr. Alderson?

Are you familiar with H.R. 2183, a bill that Mr. Shannon, myself, and Mr. Gephardt have put in?

Mr. **Alderson**. Yes, I am.

Mr. **Conable**. Would that generally take care of the problems of your three museums?

Mr. **Alderson**. It would take care of the problems I am addressing, yes.

Mr. **Conable**. The requirement would be that 25 percent of the governing board would consist of individuals other than disqualified persons who were either community leaders or representing broad cross sections of views and interests in the community which is an effort to be sure that it is not a closed corporation or museum management; that it is, in fact, a community seat and one that, therefore, is protected from the manipulation of private interests.

Mr. **Alderson**. Yes.

Mr. **Conable**. That would take care of your situation?

Mr. **Alderson**. Yes. Our board, my museum at the present time is 100 percent governed by people from the public sector. We have no family members on the board. There are no family members.

Mr. **Conable**. You still have the problem of being a private foundation and have all the disabilities that go with that.

Mr. **Alderson**. Yes, Mr. Chairman.

Thank you.

Chairman **Rangel**. If the gentleman would allow, you took my question.

I can't call it New York arrogance.

Mr. **Conable**. No, you can't.

Chairman **Rangel**. What I am saying is, I do recognize the problem and certainly the fine work done by Mr. Conable and Mr. Shannon to eliminate it. I wanted to ask whether or not you thought that if you were going to enjoy more of the public charity type of benefits whether or not your board should be more reflective of the public in terms of its membership since you don't have problems with the other restrictions?

Mr. **Alderson**. I feel that our board is broadly representative of the community of Rochester, Mr. Chairman.

Chairman **Rangel**. Who determines that?

Mr. **Alderson**. The board itself fills its own vacancies, but they have shown a commendable concern for seeing that they obtain four members of the board——

Chairman **Rangel**. Let me make it clear I am just not talking about your organization.

I believe the reason the legislation is here is because there are many organizations that are similarly situated and, of course, some Members of Congress would want to believe that there are some guidelines that would assure that other boards would be just as representative as yours. So, you would have no objection to guidelines that would mandate some type of turnover so we are just not having an extension of family ties?

Mr. **Alderson**. I agree.

Chairman **Rangel**. Would your legislation take care of that, Mr. Conable?

Mr. **Conable**. I would call the gentleman's attention to the exact wording—I will show him.

Chairman **Rangel**. Does it require that there be some type of——

Mr. **Conable**. We do not interpose our judgment to that of the community as Congress frequently does in other areas. In other words, we don't have specific guidelines but we require public officials, and broadly representative candidates.

Chairman **Rangel**. Sometimes some of us believe that when you want to be treated like a public charity, you ought to have accountability to the public. Others differ.

Thank you so much. If there are any things the other two of you would like to add, the Chair would welcome it.

If not, thank you very much.

The next panel is Larry Besant, librarian, Linda Hall Library, Kansas City, Mo.; James M. Canavan, Jr., president, Mercantile Library, St. Louis, Mo.; Virgil F. Massman, executive director, James Jerome Hill Reference Library, St. Paul, Minn.; and Michael N. Newmark, counsel, St. Louis Mercantile Library Association.

We will be operating under the 5-minute rule. The entire statement of the panel will be entered into the record, and I will ask Dr. Massman, executive director of the Hill Reference Library to start off.

Mr. **Newmark**. With your permission, I am Michael N. Newmark and I would like to proceed first, if that is agreeable.

Chairman **Rangel**. Do you have a problem with that?

Mr. **Massman**. No.

Chairman **Rangel**. Whatever you four agree upon is all right.

STATEMENT OF MICHAEL N. NEWMARK, COUNSEL, ST. LOUIS MERCANTILE LIBRARY ASSOCIATION

Mr. **Newmark**. Thank you, Mr. Chairman.

I am Michael Newmark, legal counsel to the St. Louis Mercantile Library.

I speak this morning on the effect that the 10-percent public support test has on certain libraries that are clearly public in nature.

This problem has been addressed by others including Assistant Secretary Chapoton in his prepared statement. Each of my copanelists will briefly describe a particular library that has been adversely affected.

Two of these libraries are presently classified as private operating foundations, and one has achieved public charity status.

Each of the libraries has developed a sizable endowment fund, either by a single gift made years ago or by the gradual growth of an endowment fund over a period of many years. But for the significant endowment funds and the investment income from these funds, each of these libraries would clearly be a public charity as the facts of each case will show that the respective library is public in nature.

As will also be seen from the description of the libraries, there is little or no chance of any abuse.

There is a need for legislation that would exempt these libraries from the expenditure responsibility rules and the 2-percent excise tax. The combined effect of eliminating both of these would provide more funds for these libraries to serve the public.

H.R. 2183, referred to previously this morning by Congressman Conable, directly addresses the problem facing these libraries by providing that libraries that meet certain strict standards would qualify as public charities.

We think that there are only two libraries in the country that would actually change their status to public as a result of H.R. 2183 and those two libraries are the Mercantile Library in St. Louis and the Linda Hall Library in Kansas City.

However, we are not wedded to the solution proposed by Congressmen Shannon, Conable, and Gephardt, and there may be other satisfactory alternatives, such as the possibility of a section 509(a)(3) control requirement that would also serve to ensure public responsiveness.

[The prepared statement follows:]

Lewis, Rice, Tucker, Allen & Chubb,
St. Louis, Mo., June 16, 1983.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
House of Representatives, Washington, D.C.

Dear Mr. Salmon: I am legal counsel to the St. Louis Mercantile Library Association ("Library") which operates a permanent library open to the public in St. Louis, Missouri. We thank you for the opportunity to enter into the record our views on the need to change the present private foundation rules, particularly as they relate to libraries that serve the public. We also take this opportunity to support H.R. 2183 which would provide that certain museums and libraries will be treated as public charities for federal tax purposes.

SUMMARY OF STATEMENT

1. Some permanent libraries, including the St. Louis Mercantile Library Association, because of investment income from their endowments, fail to meet the Internal Revenue Service guidelines to qualify as a "publicly supported" organization and therefore are classified as private operating foundations, even though they were organized and are operated to serve the public.

2. These libraries, as well as many libraries which satisfy the present financial support tests for public status, incur significant expenditures for legal and accounting fees on an annual basis. Amounts that would otherwise go to the exempt purpose are therefore expended to determine and insure that the organization will meet the Internal Revenue Service public charity guidelines or satisfy the various requirements placed on private operating foundations.

3. A library that is classified as a private foundation has a more difficult task than an organization classified as a public charity in soliciting funds from potential contributors, particularly because of the "expenditure responsibility" requirements of section 4945 imposed on gifts from other private foundations. There is no public purpose served by discriminating against libraries in this manner; to the contrary, libraries that serve the public deserve the same treatment as other public charities. There is a stigma attached to private foundation status which generally makes it more difficult to obtain support from the general public.

4. The purpose of the two percent excise tax on private foundations as well as other aspects of the 1969 private foundation legislation, as set out in the legislative history to the Tax Reform Act of 1969, is not to raise revenue for the government. The purpose of the excise tax is rather to cover the Internal Revenue Service expense in monitoring private foundations, principally to insure and guarantee that such organizations are properly and promptly using their funds for charitable purposes. The purpose behind the 1969 legislation is not applicable to the class of libraries which are the subject of H.R. 2183.

5. H.R. 2183, as it relates to libraries, will permit certain permanent libraries that are open to the public, including the St. Louis Mercantile Library Association, to be treated, like other educational institutions, as a public charity for federal income tax purposes without regard to the sources of their financial support. The bill is limited to those libraries which are operated as a permanent and principal part of the tax-exempt activities of the organization and were organized by a public act of the United States, or any state, or the District of Columbia, or of any possession of the United States, or were in existence prior to 1789. In addition, the proposed legislation would extend to libraries which are open and available to the public at no charge and are operated as the sole activity of the organization. The purpose of the legislation is to provide libraries that are clearly organized to serve the public with public charity status. H.R. 2183, or similar legislation, will have a minimal impact on government revenue. The Independent Libraries Association has advised us that to their knowledge the proposed legislation would directly effect only two libraries. However, such legislation will have an indirect effect on many libraries, because its passage would also relieve those libraries of the necessity of continuing to insure that they satisfy the "publicly supported" tests. As a result, significant annual legal and accounting fees incurred by these organizations to protect their present status would be available for furthering their exempt purpose.

6. The likelihood of abuse from this kind of legislation is remote since only those libraries that satisfy the proposed narrow requirements will qualify as a public charity.

7. If additional safeguards are considered necessary to prevent any perceived potential for abuse, we believe a control requirement (e.g., not controlled directly or indirectly by one or more disqualified persons other than foundation managers and other than one or more organizations described in section 509(a)(1) or (2), language along the lines found in section 509(a)(3)(C)) would be appropriate.

I. HISTORY OF THE ST. LOUIS MERCANTILE LIBRARY ASSOCIATION

The St. Louis Mercantile Library Association was established in 1846 to form a well-rounded collection of books for the information and convenience of St. Louisans. The formation of the Library was authorized and approved by a Public Act of the General Assembly of the State of Missouri. The Library is currently maintained in its own building in downtown St. Louis.

Over the past 137 years, the Library has assembled a notable collection of books, now over 220,000 volumes, comprising a general collection in the liberal arts area, with emphasis on history, biography, travel, philosophy, religion, and the arts. The Library maintains one of the country's most distinguished and comprehensive collections of regional history pertaining to St. Louis and western Americana. These collections are frequently consulted and referred to by many students and historians in these fields.

The Library has also been the recipient of many valuable gifts during its existence. These gifts include the fragmentary journal of Pierre Laclede's stepson, Auguste Chouteau, describing the founding of St. Louis, the original manuscript "Journal of the Proceedings of the First Legislative Council of the Territory of Louisiana, from June 3, 1806 to October 9, 1811," and the four-volume Elephant Folio of Audubon's "Birds of America." In addition, the Library was the receipient of a comprehensive collection of George Caleb Bingham drawings.

During its existence, the Library was able to develop a substantial endowment fund. This endowment fund was substantially increased by the sale in the mid-1970's of the Bingham collection.

The Library is open to the public and currently maintains a broad-based membership of approximately 2,000 members. While membership is necessary to check out materials (membership dues are currently a nominal $25.00 per year), anyone can use the books and collections on the premises of the Library. During 1982, over 10,000 individuals utilized the Library's facilities. In addition, the Library staff will also conduct research pursuant to telephone requests from both members and nonmembers. The Library is also made available to students from St. Louis University and Washington University to observe the Library's unique cataloging system, reference department and rare book room.

II. CURRENT TAX STATUS OF THE LIBRARY

The Library is currently classified as a "private operating foundation" for Federal tax purposes. It is classified as a private foundation because, with its significant endowment fund, the proportion of the receipts and gifts from the general public compared with the total sources of support do not satisfy the "publicly supported" tests to qualify as a public charity under the existing Internal Revenue Code and regulations. Because the Library is classified as a private foundation, it must pay a two percent excise tax on its net investment income. The Library must also incur annual legal and accounting expenses to make sure that it falls within the private operating foundation guidelines. In addition, the Library's private foundation status has an adverse impact on its fund raising activities, particularly with respect to obtaining grants from other private foundations.

III. PROPOSED LEGISLATION

We recommend that legislation such as H.R. 2183 be adopted to provide that any tax-exempt organization that operates a bona fide library as a permanent and principal part of its tax-exempt activities, would be treated, for tax purposes, as a public charity in the same manner as other educational organizations such as schools and universities. To prevent any potential abuse, legislation (as in H.R. 2183) should be limited to only those libraries which are operated as a permanent and principal part of the tax-exempt activities of the organization and were organized by a public act of the United States, of any state, of the District of Columbia, or of any possession of the United States, or were in existence prior to 1789. In addition, such legislation should (as does H.R. 2183) extend to permanent libraries which are open and available to the public at no charge and are operated as the sole activity of the organization. The purpose of the legislation is to insure that only such libraries that are clearly organized to serve the public will benefit from this legislation. If additional safeguards are perceived to be necessary, we believe a control requirement (similar to that found in section 509(a)(3)(C)—"not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in section 509(a) (1) or (2))," would solve that concern. We are of the opinion that these requirements provide the necessary protection against any potential for abuse and will be easily administered by the Internal Revenue Service, without undue cost to either the Internal Revenue Service or the organizations.

IV. REASON FOR LEGISLATION

(a) Elimination of excise tax and annual accounting and legal fees

Because of the investment income from their endowments, some tax-exempt organizations operating a library run the annual risk that they will fail to meet the Internal Revenue Service guidelines to qualify as a "publicly supported" organization and that, therefore, they will be classified as a private foundation. Under existing law, unless a library meets the "publicly supported" financial test, it will not qualify as a public charity even though such library clearly serves a public purpose. Such libraries spend significant amounts in legal and accounting fees on an annual basis, funds that would otherwise go to the exempt purpose (for example to purchase books and other library materials) to determine and insure that they will meet the Internal Revenue Service guidelines. Furthermore, it does not appear to us that the present financial support test necessarily insures meaningful accountability to the public. A library that does not meet these tests is usually classified as a private operating foundation and is required to pay a two-percent excise tax. The purpose of the excise tax, as set out in the legislative history to the Tax Reform Act of 1969, is not to raise revenue for the government, but to cover the Internal Revenue Service expense in monitoring private foundations, principally to insure that such organizations are properly and promptly using their funds for charitable purposes. The purpose behind this excise tax is not applicable to the class of libraries described above.

(b) Fund raising problem

A library that is classified as a private foundation has a more difficult task than an organization classified as a public charity in solicitng funds from potential contributions. For example, a private foundation that is not an operating foundation may make contributions to public charities and private operating foundations, but generally may not make qualifying contributions to other private foundations that are not operating foundations. Because of the uncertainty as to whether a private operating foundation continues to qualify as an operating foundation (there are complex tests that must be satisfied annually), many individual contributors and other private foundations that are not operating foundations are hesitant to contribute funds to such an organization even though it clearly serves a public purpose. In addition, a private foundation making contributions to a private operating foundation is required to maintain certain reports and exercise "expenditure responsibility" with respect to such grants, while there is no reporting responsibility with respect to grants to public charities. As a result, funds that otherwise might be contributed to a library described above, are diverted to other charitable organizations. The St. Louis Mercantile Library Association is aware of at least one private foundation that previously made a $10,000 per year grant to the Library, but has since ceased to make such grants solely because of the Library's private operating foundation status.

While most libraries within the class of libraries described above are able to satisfy the "publicly supported" tests and qualify as public charities, there are a few libraries within that class, such as the St. Louis Mercantile Library Association, that because of their endowment funds are unable to satisfy these tests, and therefore are classified as private operating foundations.

V. REVENUE EFFECT

The anticipated annual loss in Federal revenue if legislation were enacted which would provide that the libraries described above would be classified as public charities would be less than $75,000 per year, as such legislation would directly affect possibly only one other library, in addition to the St. Louis Mercantile Library Association. The Independent Research Libraries Association has advised that to their knowledge only the St. Louis Mercantile Library Association and Linda Hall Library, also located in Missouri, would be directly affected by this proposed legislation. The proposed legislation would indirectly affect many other permanent libraries because the passage of such legislation would also relieve these libraries of the necessity of continuing to insure that they satisfy the "publicly supported" test. For this reason, legislation similar to H.R. 2183 has been supported by, among others, The Independent Research Libraries Association, whose members include the New York Public Library, the Henry E. Huntington Library, American Antiquarian Society and The Library Company of Philadelphia.

Respectfully submitted,

MICHAEL N. NEWMARK.

Mr. NEWMARK. It is now my pleasure to introduce Mr. James M. Canavan, Jr., president of the St. Louis Mercantile Library Association.

STATEMENT OF JAMES M. CANAVAN, JR., PRESIDENT, ST. LOUIS MERCANTILE LIBRARY ASSOCIATION, ST. LOUIS, MO.

Mr. **Canavan**. Mr. Chairman, members of the committee, I am James Canavan. I am the president of the St. Louis Mercantile Library Association. This library was founded in 1846, and has served the educational interests of Metropolitan St. Louis by providing an extensive collection of books, including many not available anywhere else in the metropolitan area or for that matter anywhere in the country.

The library maintains one of the country's most distinguished and comprehensive collections of regional history pertaining to St. Louis and Western Americana.

The formation of the Mercantile Library was authorized and approved by public acts of the General Assembly of the State of Missouri. The library is currently maintained in its own building in downtown St. Louis.

The library is open to the public and currently maintains a broad-based membership of approximately 2,000 members. There is a relatively nominal $25 annual library membership charge for those who desire to check out books.

In addition to individuals who check-out books, the library is used on the premises for free by many individuals.

It is estimated that during 1982 over 10,000 individuals used the library's facilities. The Board of the Library consists of 16 individuals, and is broad-based. The endowment fund has grown gradually since 1846 as the result of many different gifts from many different people. Some of the gifts appreciated substantially in value during that period of time. The library has a paid staff of 12 individuals, none of whom is related in any way to any of the board members.

As Mr. Newmark indicated, despite the fact that we serve the public with a permanent facility and a paid staff in our own building, with 2,000 members, and with an independent board, we do not qualify as a public charity because our endowment has grown over our 137-year history and we cannot meet the public support test.

This has caused us to lose a contribution of $10,000 a year from a private foundation that used to contribute $10,000 a year to us and has indicated to us that they would reinstate the contribution if we were classified as a public charity.

We believe legislation is needed that would permit a library like ours to be classified as a public charity.

Thank you, and I would now like to introduce Larry Besant, director of the Linda Hall Library in Kansas City.

STATEMENT OF LARRY X. BESANT, LIBRARIAN, LINDA HALL LIBRARY, KANSAS CITY, MO.

Mr. **Besant**. Thank you, Mr. Chairman.

I see that our light is on. I will be very brief and skip to some of the punch line.

We are a science library in Kansas City, Missouri, that was established by the wills of Herbert and Linda Hall. I will quote from the wills, ". . . maintenance and operation of a free public library for the use of the people of Kansas City and the public generally."

Our experience is that the public good will be served by legislation such as H.R. 2183. Our concern is that a tax-exempt organization operating a public library as its permanent and principal duty be properly treated as a public charity in the same manner as other educational research and cultural organizations.

Thank you very much for your consideration. I would like to introduce Mr. Virgil Massman.

[A letter on behalf of Linda Hall Library follows:]

GAGE & TUCKER,
Kansas City, Mo., June 16, 1983.

Re private foundations.

JOHN J. SALMON, Esq.,
Chief Counsel, Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR MR. SALMON: We are writing on behalf of our client, Linda Hall Library, in support of certain proposed changes to the Internal Revenue Code of 1954, as amended (the "Code"), which would permit Linda Hall Library to be classified as a "public charity" rather than a private foundation. Even though the Library is open to and serves the public at no charge, it is presently classified as a private foundation because all but a very small portion of its income is derived from two testamentary trusts (each of which is exempt from taxation under Section 501(c)(3) of the Code) established by the wills of Herbert and Linda Hall, both of whom died in the 1940's.

Under existing law, unless the Library receives one-third of its total support from public sources it is not deemed to be "publically supported." Because Linda Hall Library has a substantial endowment, it can not satisfy the "publically supported" tests in the Code. Accordingly, the private foundation rules require the Library to pay an excise tax equal to 2% of the Library's net investment income. Furthermore, a library that is classified as a private foundation has a more difficult task than an organization classified as a public charity in soliciting funds from potential contributors. Generally, the ability of a donor to make qualifying contributions to private foundations that are not "operating" foundations is restricted. Because of the uncertainty as to whether a foundation continues to qualify as an operating foundation—there are complex tests that must be satisfied annually—many potential contributors are hesitant to donate funds to a private foundation even though it clearly serves a public purpose. As a result, funds that would otherwise go to libraries such as the Linda Hall Library are diverted to other charitable organizations.

The annual excise tax imposed upon the Linda Hall Library is $30,000 to $34,000. In addition, the Library is obligated to incur legal and accounting expenses in order to insure that it falls within the private operating foundation guidelines. Taken together, the excise tax and the legal and accounting expenses represent a significant amount of money which could and should be applied to further the exempt purposes of the Linda Hall Library, such as the purchase of books and operation of the Library.

The purpose of the excise tax, as set out in the legislative history, is not to raise revenue for the Government, but to cover the Internal Revenue Service expenses in monitoring private foundations, principally to insure that such organizations are promptly and properly using their funds for charitable purposes. For the reasons set out herein, we believe that the purposes behind the excise tax are not applicable to the Linda Hall Library.

The Library was established in 1946. The instruments governing its establishment and operation specifically provides that the Library shall be open and available to the public at no charge. These instruments also provide that none of the Library's income shall be expended for purposes other than the construction, maintenance, expansion, operation or management thereof.

The Linda Hall Library is maintained in its own building situated on a tract of land adjacent to the University of Missouri at Kansas City, in Kansas City, Missouri. The Library has a very close relationship with the University, which is almost entirely dependent upon Linda Hall for library materials in the areas of science and technology.

Since its establishment, the Library has assembled one of the Nation's most extensive and notable collections devoted to science and technology. Together with a distinguished retrospective collection, it also has very extensive holdings of current books and journals from all countries where publications at the research level in science and technology are available, such as the Soviet Union, Japan, The People's Republic of China, and Eastern and Western European countries. Many of these materials are not readily available elsewhere to the public and the research community. The Library's extensive holdings in scientific journals, monographs, proceedings of scientific symposia, and the like are widely used through inter-library loan and copying services.

Shortly after its establishment, Linda Hall Library purchased the entire collection of the American Academy of Arts and Sciences which had its principal offices in Boston, Massachusetts. After the purchase, Linda Hall Library agreed to act as the agent of the Academy in continuing its broad exchange program with libraries and learned societies located throughout the world.

In the early years of its existence, the Linda Hall Library was selected by the Atomic Energy Commission as one of 15 or 20 depositories throughout the United States for its literature, and the Library continues to maintain a collection of materials relating to the AEC's successor organization, the Energy Research and Development Administration. In the late 1950s the National Aeronautics and Space Administration selected Linda Hall Library as depository for the literature which it distributes in connection with its information program.

The Linda Hall is a depository for all specifications and standards to be used by individuals and organizations when dealing with military and civilian projects of the federal government. The Library also maintains the patent specifications for all patents issued by the U.S. Government since July, 1946 and is a depository for all current maps issued by the U.S. Geological Survey.

The use of the Linda Hall Library endowment fund income is restricted such that the kinds of tax abuses which the private foundation rules were enacted to prevent are not possible. As described above, the Library serves a unique public purpose, which could be furthered if they were available to the Library the amounts currently paid to the government as an excise tax, the amounts paid to lawyers and accountants to insure compliance with the private operating foundations guidelines and additional contributions which our client believes would be forthcoming if Linda Hall Library were classified as a public charity.

For all of the reasons discussed above, on behalf of our client we urge that the Code be amended so that libraries such as the Linda Hall Library, which (i) are open and available to the general public, (ii) do not charge a fee for admission to their premises or use on their premises of the library collection, and (iii) are operated by organizations, none of whose income is expended for purposes other than the construction, maintenance, expense, operation or management of such libraries, their collections and the premises on which such libraries are located, are classified as public charities and not as private foundations.

Should you have any questions, we will be pleased to discuss with you further our thoughts and those of our client on this matter.

Sincerely,

JOHN S. ECKELS.

STATEMENT OF VIRGIL F. MASSMAN, EXECUTIVE DIRECTOR, JAMES JEROME HILL REFERENCE LIBRARY, ST. PAUL, MINN.

Mr. MASSMAN. I am Virgil Massman from the James Jerome Hill Library in St. Paul, Minn. I will be brief.

I think these libraries perform a service which is very similar to that of other public and academic libraries. The Hill Library is a business library which is open to the general public and which provides a very significant service to the small businesses in the community which cannot support their own libraries.

About 70 percent of the collections of the Hill Library are unique in the area and consequently we provide a very significant service which is not provided by the other public and academic libraries in our community.

I think because of the fact that we serve essentially the same function as public and academic libraries these groups of libraries should be identified as public charities.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF VIRGIL F. MASSMAN, EXECUTIVE DIRECTOR, J. J. HILL REFERENCE LIBRARY, ST. PAUL, MINN.

H.R. 2183 is important to the J. J. Hill Reference Library and to a number of other libraries, and I strongly support H.R. 2183.

The Hill Library derives most of its income from its endowment. It provides business information to the general public and to businesses, particularly to small businesses which cannot afford to maintain their own libraries.

The libraries which would be affected by H.R. 2183 provide a service to the public which is similar to services provided by academic and public libraries, but they also provide a service which is different from academic and public libraries because all of these libraries have specialized, in-depth research collections.

These libraries are an extension of or a supplement to public and academic libraries. The Hill Library, for example, works closely with other local libraries. About 70 percent of our holdings are not found in other local libraries.

If the Congress wants to add another test to insure responsiveness to public needs, Congress might specify that these libraries must participate in a local, regional, and/or national consortium of libraries. This would insure that these libraries are a part of the library developments of the nation.

Because these libraries have unique collections, because they supplement academic and public libraries, because they provide specialized resources for the public, these libraries are educational institutions, they are a major national asset, and they deserve to be treated as public charities.

Chairman **RANGEL**. I want to thank the panel and I assume that all of you support Mr. Conable's legislation.

Mr. **NEWMARK**. Yes.

Mr. **MASSMAN**. Yes.

Chairman **RANGEL**. I want to ask, do you have objections to having the board reflect some public responsiveness? This is what the Secretary of the Treasury's Office testified about—that they would consider supporting an exemption from the foundation restrictions for your type of outfit if the organization submits other factors that indicate public responsiveness.

I assume your boards reflect members of the community because you have testified to it and you are not an extension of the grantors. But would you have any objections to a requirement that a certain amount of the board membership be community people?

Mr. **MASSMAN**. I would certainly welcome such a test.

Chairman **RANGEL**. In the legislation?

Mr. **MASSMAN**. In the legislation, yes.

Mr. **NEWMARK**. Yes.

Mr. Chairman, the Mercantile Library would have no objection to that. The only thing I would point out is maybe there is a need for alternatives so you could prove public responsiveness in one way or another.

Chairman **RANGEL**. What would you recommend?

Mr. **NEWMARK**. I think that that would be fine.

Chairman **RANGEL**. What would you recommend would be the other factors?

Mr. **NEWMARK**. I think if you could show there is no disqualified person who has any control over the library, if you could show that a lot of individuals are using it, if it has got a permanent facility, if it is open for free, I think you could be in an alternative series all showing public responsiveness.

Chairman **RANGEL**. Any other comments?

Mr. **BESANT**. I would simply comment that the alternatives even in the bill are satisfactory. The involvement of a large board, I might point out these other two have 16 and 25 members, respectively, and as operating a library that can lead to problems, have too much, numerically representation.

Chairman **Rangel**. Too much what?

Mr. **Massman**. He is talking about having too large a number of boards, but I don't think that is what you are talking about.

Chairman **Rangel**. That is not what I am talking about at all. I am just saying that people in the community can say that is our library, and you all suggest you already do that.

Mr. **Besant**. That is true.

Chairman **Rangel**. Thank you very much.

Mr. Conable.

Mr. **Conable**. May I ask, what is your major problem? Is it the foundation tax or is it expenditure responsibility or—you are all pretty well established and that shouldn't be a great problem.

I notice you all mentioned it, but is the foundation tax the thing that bothers you the most about being described the way you are?

Mr. **Besant**. I think the 2-percent excise tax could be better spent on the stated purpose, our mandated legal purpose.

I think that as a test of expenditures, I liked the suggestions earlier by the gentleman from the Welch Foundation. It seems a more appropriate level, the 75-percent level.

Mr. **Conable**. Yes.

Mr. **Newmark**. I think the Mercantile Library could use funds from both places to buy books and better serve the public. We know we have been losing a fairly significant contribution annually because another private foundation doesn't want to go through the expenditure responsibility requirements.

Chairman **Rangel**. Thank you again.

The next panel will be the Hutton Settlement Children's Home from Spokane, Wash.; the Howard Memorial Fund, and the Jewish Foundation for the Education of Women. Mrs. Foley, from the office of her husband, the majority whip, Tom Foley, will introduce the representative from the Hutton Settlement.

Mrs. Foley.

INTRODUCTION BY MRS. TOM FOLEY ON BEHALF OF HON. THOMAS S. FOLEY, MAJORITY WHIP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mrs. **Foley**. Thank you, Mr. Chairman and members of the committee for allowing me to appear in place of my husband.

I am pleased to be here and to be able to introduce Bob Revel, administrator of the Hutton Settlement Children's Home. It is an orphanage located in our hometown of Spokane, Wash.

Chairman **Rangel**. Could you talk directly into the mike, please, Mrs. Foley?

Mrs. **Foley**. Mr. Revel, an orphan himself, is a very respected and distinguished member of the Spokane community where he has held several civic leadership posts. The Hutton Settlement, of which he is administrator, has at no cost to the Government, compassionately cared for orphan children throughout the Pacific Northwest since 1919.

I am sure my husband would want to thank the committee for providing Mr. Revel with the opportunity to discuss his institution's views as to the need for revising the rules regarding public charities.

As you know, earlier this month he introduced legislation, H.R. 3343, at Mr. Revel's request, and on behalf of the Hutton Orphanage, that would provide that established orphanages be automatically treated under the Internal Revenue Code as public charities just as other recognized public service organizations have been.

Thank you very much.

Chairman **Rangel**. The subcommittee is fully aware of the great contribution Mr. Foley has made in introducing legislation in this area. We appreciate his leadership and we welcome the testimony of Mr. Revel.

Mrs. **Foley**. Thank you.

STATEMENT OF ROBERT K. REVEL, ADMINISTRATOR, THE HUTTON SETTLEMENT CHILDREN'S HOME, SPOKANE, WASH.

Mr. **Revel**. Mr. Chairman, distinguished members of the committee, I am Robert K. Revel, administrator of the public charity known as the Hutton Settlement Children's Home located in Spokane, Wash.

I want to thank you for the opportunity to present the views of Hutton Settlement on the need for revisions in the rules governing the status of private foundations and public charities.

Our role as a public charity will be outlined to show the committee that private philanthrophy has and is responding to the President's call for increased volunteerism. That the present law does, in fact, impose unduly burdensome restrictions that impede the initiative of private philanthropy.

The Hutton Settlement Children's Home is a public charity operated for the total care of orphans, neglected and dependent children—boys and girls—in a campus-type setting since November 3, 1919.

By intent and directive, the children are totally integrated into the community. Education in a public school system, church and Sunday school attendance in community churches, Boy Scouts, Girl Scouts, Campfire, Blue Birds, Job's Daughters, and so forth, all participate in clubs and groups off campus.

Volunteers from every walk of life and segment of the community have provided countless hours of inkind time and money over the years. Friendship homes exist where families take children into their homes for weekend visits and vacation periods. Citizens who donate many hours as tutors for strengthening educational skills. Service clubs who donate money, time, and dirty hands projects.

Many organizations use our campus for a meetingplace and involve our children in activities, and so forth.

We are concerned in particular with the 10 percent support test as set forth in regulations relating to the definition of a public charity as outlined in section G of your May 3, 1983, press release.

Upon the death of the founder in 1927, his last will and testament and deed of trust prescribed that the endowment and any moneys for investment were to be used for the purchase of commercial real estate in the city of Spokane, Wash. At the time of his death, he left a number of pieces of commercial property to the charity.

The logic behind utilizing commercial real estate as an investment tool, was that the rental income would be used as the operating income for the charity. During his lifetime, and since, it has proven to be a very secure, prudent investment procedure.

This investment procedure has allowed the Hutton Settlement to provide total care and support for the children at no cost to the taxpayers and the States of Washington, Idaho, and Montana. Hutton Settlement does not require a fee for children placed by public agencies.

Hutton Settlement, under present law, is finding itself having great difficulty in meeting the 10-percent public support test.

Because real estate is the investment guideline required by law in our case, the definitive treatment of rents is included in the factor of gross income. There is no allowance made for operating expenses for this type of investment.

In cases where the flexibility of investing in a securities portfolio is used, there are no extraordinary operating expenses and the interest income or dividend is, in fact, both the gross and net income position.

Because of our restrictive real estate position, the same financial leverage does not exist.

Escalating energy costs, real estate taxes, and other related rental expenses are included in the 10-percent factor. This makes it extremely difficult to make the required 10-percent gross income factor.

Hutton Settlement, in its efforts to secure 10-percent support from the private sector, finds itself in direct competition with all other charities in our community.

Because all these many years we have been self-sufficient, this creates a very unfavorable set of circumstances.

Many charitable organizations in the Spokane area, even with Government revenue help, have been forced to desist or grievously cutback their efforts in a time of financial crisis for our State and local governments.

Under present law, we may be forced to start accepting direct Federal and State revenues, even though we don't need them, in order to comply.

We feel the entire issue of a public charity who has been in operation prior to the 1969 law and restricted to investing in real estate by legal documents, should be reviewed by this committee.

We feel that our orphanage has clearly been demonstrating for 64 years that it meets the intent of Congress as outlined in the 1969 Tax Reform Law.

Because of our real estate investment requirement and being self-sufficient, we find ourselves in a difficult set of circumstances. The traditional private volunteer work of orphanages, and how it has helped to rescue the children and families of children, should be recognized as an historical part of our social and national heritage.

It would not be in the best interest of our community and its children to allow Hutton Settlement to lose its tax-exempt status because of this regulation.

True public support involves the community in the giving of time, money, and effort, and is not necessarily evidenced by the size or dollar amount of donations by individuals.

Hutton Settlement has stressed community involvement in its operation, for it believes it leads to true public support in both content and spirit.

The charity was founded and established by the late L. W. Hutton, a successful businessman and philanthropist in Spokane. Mr. and Mrs. Hutton were both full orphans and had no biological children of their own. After the death of Mrs. Hutton in 1915, Mr. Hutton announced his plans to construct a cottage-type orphanage on 364 acres in the Spokane Valley. In establishing the orphanage, L. W. Hutton's first goal was the total involvement and support of the community.

A governing board of trustees was established, made up of 21 women, all of whom are wives of prominent business and professional leaders in the community. To strengthen this governing board, he also established a financial advisory committee. The members of this committee serve according to designated positions in our community. The members are the mayor of the city of Spokane, the chairman of the board of county commissioners, and the presidents of the three largest community banks.

Both the board of trustees and the financial advisory committee members are a hard-working group of community citizens that meets every month, 12 months of the year.

All members of the board of trustees serve on designated committees and are actively involved in the operation and supervision of the Hutton Settlement.

In all cases, it is a noncompensatory, volunteer position. There are no relatives of the founder who serve on this board. This eliminates the element of self-dealing and strengthens the community ties. Hutton Settlement has the finest critics available, the community in which it resides.

To rectify this situation, we urge your support of Congressman Tom Foley's bill, H.R. 3343, which would provide that established orphanages will be exempted as other established, historic, public service organizations have been.

Thank you for allowing the Hutton Settlement to present its statement today and if you have need for additional data, we stand ready to supply it to you.

I will be happy to answer any questions you may have.

Chairman RANGEL. Mr. Dowling, president of the Howard Memorial Fund, will be recognized for 5 minutes.

STATEMENT OF MONROE D. DOWLING, PRESIDENT, HOWARD MEMORIAL FUND

Mr. DOWLING. I wish to thank you for permitting us to come down here and speak to you.

I am president of the Howard Memorial Fund, and I reside in Washington at the present time and commute back and forth to New York.

Chairman RANGEL. Speak up, please.

Mr. DOWLING. I commute back and forth to New York.

I will save time, and I will defer to Mr. Tanenbaum.

STATEMENT OF CHARLES J. TANENBAUM, PRESIDENT, JEWISH FOUNDATION FOR THE EDUCATION OF WOMEN

Mr. TANENBAUM. We are appearing for two century-old educational institutions which have been caught within the private foundation net because the income from their endowment built up from public support now provides more than 90 percent of the income, and our concern is with the 10-percent public support test.

When we hear of historic landmarks and adaptive use, we think of physical structures.

Yet, it is equally important to preserve institutional landmarks.

In each of our cases it has meant shifting from the operation of a physical school to the maintenance of scholarship programs that provide direct assistance to individuals seeking to help themselves through education.

There was a comment earlier about the need for more scholarship funds.

After the enactment of the 1969 act we both qualified our scholarship selection procedures with the approval of the Treasury as being nondiscriminatory.

You may think that the excise tax is small, but the $142,000 our organizations have collectively been forced to pay has forced us to deny assistance to approximately 188 worthy students.

It is these students we must reject who bear the burden of this tax.

Our President has emphasized the importance of education today, and we feel that our role as scholarship foundations is vital; that if we came to you to ask for money, you might consider us, but we simply ask you to stop taking it away from us.

We should be encouraged, not treated as somehow a suspect organization.

Today, where so much scholarship money is controlled by educational institutions or governed by government formula, we play a unique role in dealing with each individual as a very special person.

There was a question before of risk grants. All our grants in a sense are risks, because we help individuals, and that is, to my mind, in a sense, the greatest risk and the greatest opportunity, and we would like to give an illustration from each of our organizations.

Two years ago, our foundation heard of a girl graduating from Brooklyn College, Gloria Naylor, who wanted to pursue an M.A. program at Yale in Afro-American studies.

We gave her a grant for those 2 years, and she now has her degree, and she has written a book, and her first novel has just received the American Book Award as the best first novel of the year.

This, I think, was a risk loan. She was a woman who had had many problems, and somehow she pulled herself up in the thirties, and she is going someplace.

Mr. Dowling would like to mention a specific case at his foundation.

Mr. **Dowling**. I have a case of Arnold Keith, out in Long Island. He and his father lived together in a terrible rat-infested apartment on a disability pension, and that was all of the money they had.

His father had been struck by an automobile. Arnold today is a graduate lawyer and has been noted in The New York Times as quite a story, as a successful person who graduated from Stonybrook College, his M.A.; Hofstra College, his law degree; and he is now with the Legal Aid Society in the city of New York.

Mr. **Tanenbaum**. The problem is the 10-percent support test. We have endowment. It has accumulated over the years from public sources. With the enactment of the Tax Reform Act in 1969, we both recognized the merit of the position that public support is some evidence of the broad public need being served.

In the last decade, we have both energetically sought current giving from members of our board, from students we have helped in the past, and other foundations, and we have been able to supplement our endowment income with current gifts averaging 5 percent of our total income.

The very fact that one has endowment makes it very easy for a donor to say, "You don't need us."

Second, the fact that we are a private foundation means that the donor is not entitled to the full deduction for gifts in securities.

In addition, public fund-raising involves an inordinate amount of time, and is expensive.

We would have to reorganize our organizations and involve them in a competitive public fund-raising. We do not want to subject our organizations to changing their character.

We urge, whether it be a grandfather clause or otherwise, special recognition where the funds have been generated in public support over the years and where we have broadly representative boards of directors. We have each submitted to you a list of our boards and from this standpoint we can comply with the various requirements, those are not a problem.

Our problems are threefold: No. 1, the 2-percent tax; No. 2, the deterrent to individual giving, and, No. 3, the expenditure responsibility on the part of private foundations who wish to support our programs.

[The prepared statement follows:]

Statement on Behalf of Jewish Foundation for Education of Women and Howard Memorial Fund

SUMMARY

Our organizations were each founded in the Nineteenth Century with broad public support to operate schools to provide vocational training. In each case, changing times led to closing these schools and the endowment derived from broad public support has been used in recent years to provide current scholarships. Despite a substantial amount of current support, neither organization can hope to meet the requirement of the present 10 percent Public Support Test, and both are thus classified as private foundations. The excise tax has, over the years, substantially reduced the number of students we can assist, and they bear the burden of this tax. Further, efforts to appeal to private donors and other foundations are hampered by the restrictions placed on gifts and grants to private foundations.

We urge that pre-1913 public charities be allowed to meet a less restrictive public support test under an appropriate "grandfather clause" which would provide us with a realistic opportunity to regain our prior status as public charities.

STATEMENT

Background of our organizations

1. Jewish Foundation for Education of Women.—This organization was founded in 1880 as a Sabbath School on the Lower East Side of New York City. The School added daily classes in 1884, and in 1895 its name was changed to Hebrew Technical School for Girls to reflect the shift to vocational training. In 1904 it embarked on a major fund-raising drive to build a new school building on Second Avenue and 15th Street, whose cornerstone was laid in 1904 in ceremonies addressed by ex-President Cleveland. The operation of this school was broadly supported by the New York Jewish community. In 1933 the school was taken over by the New York Public School System.

Mindful of the purposes for which the school had been established, our broadly-based board of directors determined that income from endowment should be used to provide annual scholarship assistance to worthy Jewish girls, and the name of the organization was, in 1939, changed to Educational Foundation for Jewish Girls. In 1964, the sectarian limitation was removed and the name changed to Jewish Foundation for Education of Girls, and in 1977, to Jewish Foundation for Education of Women.

Currently, scholarship grants and loans are being given to over 500 women a year without regard to race, color, or creed. Grant recipients attend over 200 different schools in over 20 different states, and are enrolled in undergraduate, graduate, professional, and vocational programs of almost every character.

Our organization is a major source of scholarship assistance to women residing in the Greater New York Metropolitan area, and provides a crucial resource during a period in which individual scholarship assistance is being increasingly concentrated in educational institutions and increasingly controlled by computerized evaluations. The commitment of the 13 dedicated and experienced volunteers who make up our scholarship committee—many with professional careers of their own—bring a combination of personal concern and professional experience to our selection process. Through emphasis on supplemental assistance, the Foundation plays an important role in helping women who could not otherwise pursue their chosen careers, particularly at a time when there is a growing gap between the rising costs of education and the limited amounts available from educational institutions and government funds.

2. Howard Memorial Fund.—This organization, founded in 1868 as Brooklyn Howard Colored Orphan Asylum, has had a somewhat similar history, having changed its name in 1912 to Howard Orphanage and Industrial School, to reflect its shift toward education. After the orphanage and school was closed through unfortunate circumstances in the 1920's, the corporation revived its useful work through granting scholarship assistance to needy students. In May 1956, the name was changed to Howard Memorial Fund. Ours is a small fund whose work is done by public-spirited volunteers, men and women who maintain contact with schools, colleges, social agencies, teachers, ministers, and parents. The need for higher education continues to mount to meet the demands for employers, both public and private. As a result, we must support those we assist for long periods, at higher tuition rates and at a higher minimum cost of living. Some of our students come from families on welfare who can give room and board at home, but nothing else; many students are married and heads of households, while still others are orphans or completely dependent on their summer and after school jobs and scholarships of one kind or another. Therefore, each student is helped according to his or her personal needs.

To date we have granted, through our vocational Scholarship Aid Committee, over 800 scholarships. Most students helped are between the ages of 18 and 25 from the Greater New York Metropolitan Area, who need our assistance to further their education.

The tax impact of the present law

The Jewish Foundation for Education of Women has paid exicise taxes to date of $136,374. Based on an average scholarship of $800, this tax has, in fact, compelled the Foundation to deny scholarship assistance to 170 women.

In the case of the Howard Memorial Fund, excise taxes paid to date total $6,292.45. Based on an average scholarship of $360, this tax has, in fact, compelled the Fund to deny scholarship assistance to approximately 18 students.

It is these students who bear the burden of this tax.

The inequity of the present 10-percent public support test

Following the enactment of the Tax Reform Act of 1969, both organizations actively sought to develop current giving and their efforts have generated a significant number of contributions in the past decade. However, despite these continuing efforts, current public support has averaged under 5 percent of endowment income. The existence of substantial endowment income is a serious obstacle to generating new public support in the light of the intense competition for current charitable dollars. The development of "new and additional public or governmental support on a continuous basis" would require a major expansion of our staffs and boards, and radically change the character of organizations that are today program and service oriented, and operate on minimum budgets.

Our private foundation status makes it difficult to solicit contributions from major individual donors because we cannot offer them the same advantage in the case of donated appreciated securities that they receive from public charities. Several of the donors we have approached have specifically cited this as a reason for limiting their donations to us.

We are disadvantaged in approaching other private foundations for support for specific programs because they would be forced to assume an accountability that is not imposed in the case of grants to programs administered by public charities. These obstacles substantially magnify our difficulty in seeking current funds.

Our organizations cannot realistically meet the 10 percent Public Support Test. Yet, our organizations are in every other respect public charities, operated by representative governing boards, all of whom serve without compensation. Our endowments, originally derived from broad public support, are wholly invested in diversified lists of marketable securities. Our grants are in the form of scholarships to individuals under procedures approved by the U.S. Treasury. Both organizations substantially exceed the annual distribution requirements.

We thus bear no resemblance to the private foundations the 1969 law was originally designed to regulate, and we should not be charged with an excise tax for such regulation.

Recommendation

We urge that Congress direct the Internal Revenue Service to amend its Regulations with relation to the 10 percent Public Support Test so that organizations established prior to 1913 whose endowment is derived from funds generated from past public support, be allowed to qualify as public charities under a Facts and Circumstances Test that does not require a specific minimum of public support.

JEWISH FOUNDATION FOR EDUCATION OF WOMEN

Officers and Directors with selected biographical data, listing education, occupation or profession, charitable and communal affairs.

Chairman: Mrs. Carl Goldmark

Bryn Mawr B.A. 1930; Columbia University M.A. 1932.

Former Social Worker.

Bryn Mawr School of Social Work - Advisory Board;
Council of Social Work Education - Past Treasurer;
Manhattanville Community Centers - Past Chairman;
Auxilliary to N.Y. County Medical Society - Past Treasurer.

President: Charles J. Tanenbaum

Harvard College A.B. 1934; Yale School of Law LLB 1937.

Attorney.

International Rescue Committee - Member of Board and Executive Committee;
Historical Records of the N.Y. County Clerk, Inc. - Member of Board and Member of N.Y. County Tercentenary Committee;
American Jewish Philanthropic Fund - President;
Visiting Committee to the Harvard University Library and Chairman of Subcommittee to Law Library.

First Vice President: Marcia Goldsmith

Hunter College B.S. 1943.

National Associates N.Y. Chapter of Hadassah - Chairman and Past President;
Sisterhood Park East Synagogue - Past President and Woman of the Year 1978.

Vice President: James Wood

Haverford College B.A. 1950.

Investment Manager - Prescott, Ball and Turben: Retired as Vice President Bank of New York in 1982 after 28 years.

Bryn Mawr College - Vice Chairman Board of Trustees;
American Bible Society - Board of Managers and Finance Committee
W.K. Kellogg Foundation - Advisory Board;
Howard Memorial Fund - Vice President.

Vice President: Berenice Block

Vassar B.S.

Child Study Association of North America - Member of Board;
N.Y. Psychoanalytic Institute - Treasurer .

Treasurer: Alan Kahn

Columbia College A.B. 1959

President Kahn Brothers - Member N.Y. Stock Exchange.

Altro Health and Rehabilitation Services - Member of Board;
Forest Hills Garden Association - Member of Board.

Secretary: Marion H. Spanbock

Smith College B.A. 1950; Columbia University M.A. 1951.

Teacher Early Childhood Education and Editor Publications dealing with urban planning.

Volunteer with Headstart; Synagogue Service League; Pre-Natal Clinic; Day Care Center Library.

Assistant Treasurer: Susan R. Knafel

Wellesley College B.A.

Limited Partner SRK Management

N.Y. State Union Free School District Abbott School - President;
Abbott House - Treasurer;
Friends of the New York Public Library - Steering Committee;
Ardsley Park Property Owners Association President;
Federation of Jewish Philanthropies - Oral History Project.

Assistant Secretary: Jean Bronstein

Wheaton College B.A. 1969; N.Y. School of Interior Design.

Interior Designer.

Mayor's Council of the Environment
Nightingale Bamford School - Alumni Board

Committee Chairmen

Scholarship Committee: Ellen B. Phillips

Wellesley College B.A. 1956.

Irvington House Institute Medical Research - Vice Chairman of Board;
Friends of the New York Public Library - Steering Committee;
Yorkville Volunteer Center - Member of Board.

Finance Committee: David Rosenberg

CCNY B.B.A 1937

President North American Energy Inc.; formerly Vice Chairman of the Board of Schroder, Naess & Thomas; Author of many financial reports.

Federation of Jewish Philanthropies - Member of Investment Committee;
Hospital for Joint Diseases - Orthopedic Institute- Trustee;

Loan Committee: Nadine Liebhardt

N.Y.U. B.A. 1970; National Law Center, George Washington University J.D. 1973.

Associate in Law Firm of Zalkin, Rodin & Goodman;
Former Chief S.E.C. Branch of Enforcement.

Corporate, Business, Taxation & Securities Committee of the N.Y. Women's Bar Association - Chairlady;

N.Y.U. Heights Colleges Alumni Association - Member of Board and Recording Secretary;
Recipient of N.Y.U. Founders Day Award.

Special Scholarship Committee: Morton Pepper

Harvard College B.A. 1927; Harvard Law School J.D. 1930

Senior Partner - Pepper & Pepper.

Congregation Emanu-El of the City of New York - Trustee and Chairman of Religious School Committee;
MFY Legal Services - Member of Board and Past Chairman;
Association of the Bar of the City of New York - Past Chairman of Committee on Housing and Urban Development;
Jewish Guild for the Blind - Member of the Board and Past President;
National Accreditation Council for Agencies Serving the Blind and Visually Handicapped - First Vice President; (Awarded Migel Medal by American Foundation for the Blind).

Russian Refugee Committee : Irving Kahn

CCNY 1927; Columbia School of Business 1932

Chairman of the Board - Kahn Bros.

Jewish Guild for the Blind - Trustee;
Institute for Geriatric Care - Trustee;
National Space Institute.

Legal Committee: Peter Bronstein

Harvard College B.A. 1965; University of Virginia Law School J.D. 1970.

Partner - Bronstein, Van Veen & Bronstein

Past President: LaSalle Felheim

Phillips Exeter 1918; Harvard College A.B. 1922;
Harvard Business School 1923.

Investment Counsel - semi-retired.

East Side House Settlement - Member of Board.

Other Members of the Board

Jack R. Ackerman - Harvard B.A. 1953; M.B.A. 1955
Managing Director Drexel Burnham Lambert Inc.
Jewish Board of Family and Children's Services - Trustee and Assistant Treasurer.

Sylvia S. Biederman - Hunter College B.A.; City College M.A. in Psychology;
N.Y.U. Graduate School in Economics.
Former Teacher in N.Y. City Public School System;
Teacher and subsequently Assistant Director of Woodward School;
Volunteer with CASA Foster Care Program (Court Appointed Special Advocate); Beth Israel Hospital and Lighthouse for the Blind.

Martin Blumenthal - President A.J. Hollander & Co. Inc.
Federation of Jewish Philanthropies - Trustee and member of Communal Planning Committee;
Baron de Hirsch Foundation - Trustee;
Jewish Museum - Member of Board;
92nd Street Y - Member of Board.

Alan D. Cohn - Harvard University - B.A. 1951; M.B.A. 1953.
Partner - Wertheim & Co. - Investment Bankers
Federation of Jewish Philanthropies - Trustee and its representative on the Health Services Administration of N.Y.

Linda Gabriel - Albert Einstein Medical Center of Philadelphia 1960;
Columbia University Teachers College 1968.
Registered Nurse.
Jewish Community Center, Tenafly, N.J. - Trustee.

Suzanne H. Keusch - Radcliffe A.B. 1962; Columbia University M.S.Social Work 1964.

Essie E. Lee - Lincoln School for Nurses - Diploma in Professional Nursing 1947; New York University B.S. in Public Health 1954 Columbia University Teachers College M.A. in Health Education 1956; Ed. D. 1969.

Professor of Community Health Education - Hunter College School of Health Sciences.

Association for the Aid of Retarded Children - Chairman of National Committee;
N.Y. City Mental Health and Mental Retardation and Alcohol Services - Chairman of sub-committee on Alcohol Prevention and Substance Abuse, and extensive service as member of and consultant to Committees and Foundations concerned with alcoholism.

Books include "Careers in the Health Field", "Marriage and Families", and "Alcohol: Proof of What" all published by Simon & Schuster.

Honors and awards include New York City Public Service Award for Professional Achievement 1976 and ICPA Roll of Honor.

Marjorie Madonick - New York University B.A.
Real Estate Sales
Brandeis University Women's Committee in various capacities, including Decorators Showcase, Art Tours, Cook Book Editor.
Teacher of remedial reading, emotionally disturbed and retarded children, and non-English speaking children.

Ruth Messinger:	Radcliffe College B.A. 1962. University of Oklahoma School of Social Work M.S.W. 1964. Instructor at Hunter School for Social Work, Adelphi and N.Y.U.; New York City Council - Member representing 4th District. National League of Cities - Current member of National Advisory Council; Past Member of Board of Directors. Boards include Downtown Welfare Advocate Center; Sunrise Lake Camp and Center for Metropolitan Action at Queens College.
Susan J. Schatz:	N.Y.U. B.S. 1964; Columbia University M.S. 1966 Psychotherapist in private practice, associated with Institute for Counseling and Psychotherapy. Jewish Community Center on the Palisades - Committee on Public Relations.
Ann Freda Thomas:	Radcliffe College - A.B. 1973; Yale Law School-J.D.1976. Partner in Fried, Frank, Harris, Shriver and Jacobson. Altro Health and Rehabilitation Services, Inc. - Member of Board and Committee of Psychiatric Rehabilitation

*Board of Directors

October 27, 1982

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205-07 104th Avenue
Jamaica, New York 11412
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Errol Armstrong
Branisel, Inc.
68 Williams Street
New York, New York 10005
(investment broker)

** Audley E. Coulthurst
Controller
National Urban League, Inc.
500 East 62nd Street
New York, New York 10021

** W. Gerald Davenport
468 Riverside Drive
New York, New York 10027
(former Foundation executive)

Monroe D. Dowling, Jr., M.D.
6350 Perry Circle
Lincoln, Nebraska 68516

** Monroe D. Dowling, Sr.
2301 "E" Street, N.W.
Washington, D.C. 20037
(retired government official)

** Albert A. Edwards
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2588 Seventh Avenue
New York, New York 10039
(retired educator and social worker; consultant)

Cecil R. Forster, Jr.
Vice President
Unity Broadcasting Network, Inc.
10 Columbus Circle
New York, New York 10019

John M. Friedman, Jr., Esq.
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140 Broadway
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** John M. Friedman, Sr., Esq.
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24-02 97th Street
East Elmhurst, New York 11369
(retired government official)

** Theodore Jackson
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Queens, New York 11432
(retired bank executive)

Ms. Gayle F. Robinson
400 Central Park West
New York, New York 10025
(bank executive)

Ms. Cecilia Sarasohn
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(retired educator)

** Mrs. Elizabeth LeC. Stubbs
Contract Administrator
National Urban League, Inc.
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** Charles J. Tanenbaum, Esq.
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** Mrs. Gertrude N. Thomas
199 Lawrence Avenue
Inwood, New York 11696
(retired social worker)

** Dr. Hillery C. Thorne
98 Montague Street
Brooklyn, New York 11201
(retired educator)

** H. Willets Underhill
Jericho Turnpike
Jericho, L.I., New York 11753
(civic and community person)

** Mrs. Constance J. Whitfield
245 Storer Avenue
New Rochelle, New York 10801
(civic and community worker)

** James Wood
Prescott, Ball & Turben
57 South Moger Avenue
Mt. Kisco, New York 10549
(former bank executive; investment broker)

Chairman **Rangel**. There is strong support for removing some of those restrictions, and you keyed in on what the subcommittee will be looking for—and that is, what other factors, indications of public responsiveness, do you want to substitute for the 10-percent test. I think that it is abundantly clear where we are dealing with volunteers, Hutton, et cetera, these types of things would be necessary to substitute for the artificial guidelines.

You would have no objection?

Mr. **Tanenbaum**. We are public charities, and would satisfy any reasonable test to establish our eligibility. We are simply working volunteers. Every one of the 27 members of our board participate in one or another way. We do our loan collection, do our own loans.

Chairman **Rangel**. Mr. Conable.

Mr. **Conable**. No questions.

Chairman **Rangel**. Mr. Gephardt.

Mr. **Gephardt**. No questions.

Chairman **Rangel**. We are very sensitive to the problems your organizations are having and certainly the legislation of Mr. Conable, which the Treasury Department appears to support in principle.

Thank you very much.

The subcommittee will stand adjourned until 12:20 to give the members a chance to vote.

[Recess.]

Chairman **Rangel**. The subcommittee will resume its hearing. We have Mr. Frazer, counsel to URANTIA Foundation, and also on the panel will be two lawyers from Gardner, Carton & Douglas from Chicago, Mr. Roach and Bernadette M. Broccolo.

The URANTIA Foundation will be recognized for 5 minutes, and the law firm will be recognized for 5 minutes, and the full statements will be entered into the record.

STATEMENT OF QUIN R. FRAZER, COUNSEL, URANTIA FOUNDATION

Mr. **Frazer**. Good morning, Mr. Chairman.

I will comment on three nonprivate foundation issues which, to my knowledge, no one else has addressed themselves to: the 509(a)(2) definition of person, the declaratory judgment issue, and the definition of substantial contributors.

URANTIA Foundation is an exempt organization whose nonprivate foundation status flows from section 509(a)(2). URANTIA's purpose is to distribute the URANTIA Book—book—a revelatory, religious, and philosophical book to the public in a manner calculated to reach the greatest number of persons. The book originally was transcribed in English and now has been translated into French. Other translations are contemplated. The organization is open to members of all religions and its goal is to teach mankind about the Fatherhood of God and the brotherhood of man.

The first issue is the definition of person.

The Internal Revenue Service [IRS] defines the term "person" for purposes of the section 509(a)(2) nonprivate foundation public support test as including not only those members of the public who purchase the book for their own consumption and use, but also those members of the public--bookstores—who purchase the book in the course of their business in order to resell them to the ultimate consumer.

Since large middlemen chain bookstores with many hundreds of nationwide outlets have begun to dominate the bookstore market, URANTIA's sales of the book to those chain bookstores in recent years have increased significantly by necessity. However, due to the IRS' mistaken inclusion of middlemen bookstores in the definition of the term "person," the more books URANTIA sells to the chain bookstores for resale to the public, the less public support the IRS says that URANTIA has.

This odd result occurs because section 509(a)(2) limits to $5,000, or 1 percent of the organization's total support for the year, the amount of receipts from any one person which can be treated as receipts from the public. Since any sale of the book to a middlemen bookstore is considered a sale to one person, the bookstore and not its customers, sales to a bookstore in excess of the $5,000, or 1 percent of support, are treated as not being from the public, regardless of the fact that the book is resold to the public.

In order to prevent URANTIA and other similarly situated organizations from being treated as not being publicly supported because they must use middlemen to distribute their books and other material to the public, section 509(a)(2) must be amended to require the IRS to look through the middlemen to the customers of the middlemen in order to determine the true public support of an organization.

The second issue is declaratory judgment.

URANTIA disputed the IRS' ruling that the middlemen bookstores and not their customers are the persons URANTIA must count in determining its public support. URANTIA sought a declaratory judgment from the U.S. Tax Court—tax court—that the IRS' definition of "person" was wrong.

The Tax Court determined that section 7428 gives it declaratory judgment jurisdiction over continuing classification cases only where the IRS' ruling revokes an organization's nonprivate foundation status and not where the IRS' ruling merely may result in the revocation of the organization's nonprivate foundation status.

The Tax Court then held that even though the IRS' ruling may result in the revocation of URANTIA's nonprivate foundation status it was not sufficient to give the Tax Court jurisdiction to issue a declaratory judgment, since the IRS ruling did not revoke URANTIA's nonprivate foundation status.

On appeal, the U.S. Court of Appeals for the Seventh Circuit upheld the Tax Court.

As a result of the Tax Court's position on IRS rulings, adverse IRS rulings which harm but do not revoke an organization's nonprivate foundation status force an organization to either: (1) Decide to risk its nonprivate foundation status by proceeding forward with its present method of operation and hoping that when the IRS revokes its classification that a court will find that the IRS is wrong, or (2) decide to capitulate to the IRS and change its present method of operation, all the while believing it is right, but doing so merely to avoid the jeopardy situation of having its classification revoked and then risking a court determination of its status after the fact.

In order to prevent such jeopardy situations from occurring, section 7428 must be amended to provide a declaratory judgment remedy not only when the IRS' ruling revokes an organization's nonprivate foundation status, but also when it may result in a revocation of an organization's nonprivate foundation status.

DEFINITION OF SUBSTANTIAL CONTRIBUTORS

Section 509(a)(2) organizations, such as URANTIA, often received support from persons who are considered "disqualified persons." The result to organizations which receive contributions from disqualified persons is that contributions from those persons are treated as not being from the public. Thus contributions from disqualified persons do not help section 509(a)(2) organizations meet the nonprivate foundation public support requirements.

The category of disqualified person which causes URANTIA the most problems is the "substantial contributor" category. A subtantial contributor is a person who has contributed in the aggregate more than $5,000 to a foundation and those contributions is more than 2 percent of the total contributions received by the foundation in the year of the contribution. Section 4946(a)(1)(i) and section 507(d)(2). The rule is that once a person becomes a substantial contributor, he always will be a substantial contributor. Section 507(d)(2)(B)(iv).

URANTIA believes that the "once a substantial contributor always a substantial contributor" rule should be replaced with a rule that would allow a person's substantial contributor status to fluctuate from year to year. The present rule unfairly taints contributions from persons who make substantial contributions early in the life of an organization when the total amount of contributions is low. The rule does not take into account the relative size of a substantial contributor's aggregate contributions to the organization's total contributions as they continue to grow from year to year.

Furthermore, the "once a substantial contributor always a substantial contributor rule" unfairly applies only to section 509(a)(2) nonprivate foundations. Section 509(a)(1) nonprivate foundations are subject to a more liberal substantial contributor rule which allows a substantial contributor's status to fluctuate from year to year.

Thus, in order to ameliorate the harshness of the "once a substantial contributor always a substantial contributor" rule and bring section 509(a) (1) and (2) treatment of substantial contributors into equitable balance, the rule should allow a person's substantial contributor status to fluctuate from year to year.

URANTIA also submits that nonprivate foundations should not be prevented from treating funds received from a substantial contributor as being funds received from the public except to the extent that the funds exceed the substantial contributor's allowable amount for the year in question.

Thus, the definition of substantial contributor should be changed to allow it to fluctuate from year to year and only amounts received from a substantial contributor which are in excess of the substantial contributor's allowable amount for the year should be treated as not from the public.

Our recommendation is in order to rectify this harsh rule, substantial contributor status should be allowed to fluctuate from year to year.

Thank you for your attention.

[The prepared statement follows:]

STATEMENT OF QUIN R. FRAZER ON BEHALF OF URANTIA FOUNDATION

A. INTRODUCTION

URANTIA Foundation ("URANTIA") is an exempt organization under Section 501(c)(3) and a nonprivate foundation under Section 509(a)(2). URANTIA's headquarters are in Chicago, Illinois. URANTIA's primary purpose is to distribute The URANTIA Book ("Book"), a revelatory, religious and philosophical book to the public in a manner calculated to reach the greatest number of persons. There are readers of the Book in every state of the Union and in many of the countries throughout the world. The Book originally was transcribed in English. There is now an authorized French translation of the Book as well. Several other translations of the Book are contemplated.

URANTIA has been concerned about private foundation issues for several years. URANTIA wants to avoid the taxes, management restrictions and donor deductibility limitations which flow from private foundation classification.

Due to the present public support test under Section 509(a)(2), URANTIA finds it increasingly difficult to remain a nonprivate foundation. URANTIA believes that the Section 509(a)(2) public support test should be changed to more accurately reflect the types of public support it and similarly situated exempt organizations receive.

URANTIA is also concerned about the treatment of disqualified persons under Section 509(a)(2) because unnecessarily stringent definitions of such persons could also jeopardize its nonprivate foundation status.

Finally, based on its own experience with the courts, URANTIA is convinced that the availability of the declaratory judgment procedure is too restrictive and must be expanded to include not only Internal Revenue Service ("IRS") determinations which deny or revoke nonprivate foundation status but other IRS rulings which jeopardize an organization's nonprivate foundation status even though such a ruling does not rise to the level of a denial or revocation.

As a result of its concerns about its classification as a nonprivate foundation status, URANTIA asked one of its attorneys, Quin R. Frazer of Gardner, Carton & Douglas, to testify before the Subcommittee on Oversight, Committee on Ways and Means during its hearings on Private Foundations.

B. IS AVOIDANCE OF PRIVATE FOUNDATION STATUS A FACTOR THAT IS CONSIDERED IN DECIDING UPON THE FORMAT FOR PHILANTHROPIC ACTIVITIES? IF SO, WHY?

Avoidance of private foundation status is a primary factor in selecting a format for philanthropic activities. Private foundations are subject to a large number of restrictions that do not apply to public foundations. Under these restrictions, which are set out in detail below, private foundations must operate within a much narrower range of acceptable alternatives in managing their assets than public foundations. Private foundations are subject to several taxes, many of which are extremely punitive, that are not imposed upon public foundations. In addition, private foundations have less ability to attract contributions from individual and institutional donors than public foundations. Therefore, avoidance of private foundation status will be given the highest priority in deciding upon a format for a charitable organization.

A private operating foundation is not subject to all of the private foundation restrictions and requirements. However, private operating foundation status is more restrictive than public foundation status and high priority will be given to avoiding private operating foundation status as well.

I. Private Foundation Restrictions and Requirements

a. Management Restrictions

A number of the private foundation restrictions limit a foundation's flexibility in managing its assets. A private foundation is subject to taxation if it fails to currently distribute its income, engages in transactions with certain individuals, has a certain amount of business holdings, or makes certain investments or expenditures.

1. Taxes on Failure to Distribute Income. I.R.C. §4942.

A private foundation must pay an excise tax on its accumulated income. To avoid tax on current income entirely, a private foundation must currently distribute all income, including interest from tax-exempt government bonds, in excess of the expenses of earning the income (except net long-term capital gains) within one year following the end of the taxable year in questions. The distributable amount is reduced by the sum of various taxes that may have been imposed on the foundation, including investment income tax, unrelated business income tax and termination tax.

A minimum income-equivalent payment provision prevents total avoidance of the distribution intent through investment in growth stock of nonproductive land. For tax years beginning after 1981, the minimum distributable amount is the minimum investment return. The minimum investment return is currently computed at 5% of the fair market value of foundation assets not being used directly in carrying out the foundation's exempt purpose minus acquisition indebtedness.

Distributions qualifying for payout include (1) distributions to public charities and private operating foundations, (2) direct expenditures, including administrative expenses, for charitable purposes, (3) expenditures for assets to be used for charitable purposes, and (4) certain amounts set aside for a specific charitable project.

The first level tax is 15% of the amount that should have been paid out. A second level tax of 100% of the undistributed income may be imposed.

2. Prohibitions on Self-dealing. I.R.C. §4941.

Certain transactions between a private foundation and disqualified persons are prohibited. Disqualified persons include (1) substantial contributors, i.e., persons who contribute more than $5,000 if it amounts to more than 2% of the total contributions, (2) foundation managers, i.e., officers, directors or trustees of the foundation, (3) owners of more than 20% of a corporation, partnership, trust, or unincorporated enterprise which is a substantial contributor, (4) corporations, partnerships, trusts or estates, if a more-than-35% interest is owned by any person listed above, and (5) government officials. The prohibited transactions include (1) sale, exchange or lease of property, (2) lending of money or other extension of credit, (3) furnishing of goods, services or facilities, (4) payment of compensation or reimbursement of expenses by the foundation to a disqualified person, (5) transfer to or use by or for the benefit of a disqualified person of the income or assets of the private foundation, and (6) agreement by the private foundation to make any payment to a government official.

A three level tax is imposed on the disqualified person and any foundation manager who knowingly participates in the transactions. The first level tax imposed on the disqualified person is 5% of the amount involved in the self-dealing. A 2 1/2% tax is imposed on the foundation manager. If the self-dealing is not corrected, a second level tax of 200% is imposed on the disqualified person and a 50% tax is imposed on the manager.

3. Excess Business Holdings. I.R.C. §4943.

Excess holdings of a private foundation in a business enterprise are subject to taxation. The permitted holdings of a private foundation in a functionally unrelated corporation are 20% of the voting stock, less the percentage of voting stock owned by all disqualified persons. A private foundation may hold 35% of the voting stock if persons who are not disqualified have effective control of the business enterprise. A private foundation may hold shares of nonvoting stock if disqualified persons hold no more than 20% (35% where third persons have effective control) of the voting stock of the corporation. All equity interests that do not have voting power attributable to them are classified as nonvoting stock. (Evidences of indebtedness, and warrants and other options or rights to acquire stock are not considered equity interests.)

A de minimis rule allows a private foundation to retain not more than 2% of the voting stock and 2% of all outstanding shares of all classes of stock in a corporation despite the 20% (or 35%) limitation as long as there are no other related private foundations with stock holdings in the same corporation. For this purpose, a private foundation is "related" if it is effectively controlled (directly or indirectly) by the same persons who control the foundation in question or if it has substantially the same contributors.

Private foundation holdings in partnerships are subject to comparable limitations. A private foundation may hold 20% of the profits interest in a partnership reduced by the percentage of profits interest owned by all disqualified persons. A private foundation may hold 35% of the profits interest if persons who are not disqualified have effective control of the partnership. The profits interest of the foundation, or the disqualified person, is determined in the same manner as its distributive share of partnership taxable income under I.R.C. §704(b).

A private foundation may hold a capital interest in a partnership if disqualified persons hold no more than 20% (35% where third persons have effective control) of the capital interest in the partnership. In the absence of a provision in the partnership agreement, the capital interest of a foundation, or a disqualified person, is equal to the interest in the assets of the partnership that would be distributable to the foundation, or the disqualified person, upon withdrawal from the partnership or upon liquidation of the partnership, whichever is greater. The de minimis rule discussed above also applies to interests in partnerships.

Private foundation holdings in other unincorporated businesses are subject to the same limitations as holdings in partnerships. A private foundation is not permitted to own a sole proprietorship.

If excess holdings are not divested, a tax of 5% of the value of the excess holdings is imposed on the foundation. A second level tax of 200% may also be imposed. No tax is imposed on the disqualified person. This tax does not apply to functionally-related businesses, i.e., a cafeteria maintained by a museum for the convenience of the public.

4. Taxes on Investments Which Jeopardize Charitable Purpose. I.R.C. §4944.

A private foundation must pay a tax on any investment that jeopardizes the carrying out of any of the foundation's exempt purposes. Whether an investment jeopardizes the foundation's purpose is determined on an investment by investment basis taking into account the foundation's portfolio as a whole.1/

1/The Code and the Regulations deal with investments generally, and do not differentiate among investments in various types of business organizations.

Program-related investments are not considered investments which jeopardize a foundation's exempt purpose. A program-related investment possesses the following characteristics: (1) the primary purpose of the investment is to carry out one or more of the foundation's exempt purposes; (2) no significant purpose of the investment is the production of income or the appreciation of property; and (3) the investment is not for the purpose of attempting to influence legislation or to intervene in a political campaign on behalf of a candidate for public office. Examples of permissible program-related investments include low interest or interest-free loans to needy students and high risk investments in low income housing.

The foundation must pay a tax of 5% of any investment that jeopardizes its charitable purpose. In addition, a 5% tax is imposed on any foundation manager who participates in the investment knowing at the time that it is jeopardizing the foundation's ability to carry out its exempt purpose. A second level tax of 25% for the foundation and an additional 5% for the manager may be imposed.

5. Taxes on Taxable Expenditures. I.R.C. §4945.

A private foundation is taxed on prohibited taxable expenditures. Such expenditures include amounts paid (1) to carry on legislative propaganda or otherwise attempt to influence legislation, (2) to influence the outcome of a public election or to carry on any voter registration drive, (3) as a grant to an individual for travel, study, or similar purpose except grants awarded on an objective basis approved by the Internal Revenue Service, (4) for any purpose _other than_ religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children and animals, and (5) as a grant to organizations _other than_ public charities unless the granting foundation assumes "expenditure responsiblity", i.e., the granting foundation must comply with certain requirements to demonstrate that it has obtained at least _pro forma_ assurance that the grantee will use the funds for the exempt purpose for which they were given.

If a foundation makes prohibited taxable expenditures, it must pay a tax equal to 10% of the amount improperly expended. In addition, a tax of 2 1/2% is imposed on any foundation manager who willfully agrees to the expenditure knowing it to be improper. A second level tax of 100% for the foundation and 50% for the manager may be imposed.

b. Taxes and Reporting Requirements

In addition to restrictions affecting the management of assets, private foundations are also subject to taxes and reporting requirements not applicable to public foundations.

1. Tax on Investment Income. I.R.C. §4940.

A private foundation must pay an excise tax of 2% on its net investment income. Net investment income is defined as gross investment income and net capital gains less expenses paid or incurred in earning the gross investment income.

2. Tax on Termination. I.R.C. §507(a).

A private foundation must pay a tax on termination of its private foundation status. The tax is equal to the lower of (1) all of the income, estate and gift tax benefits (with interest) received by the foundation and any of its substantial contributors since 1913, or (2) the value of its net assets. The termination tax may be abated if the terminating foundation (1) distributes all of its assets to a certain type of public charity that has been in existence for at least five years, or (2) becomes a certain type of public charity.

3. Governing Instruments and Reporting Requirements.

To be exempt and eligible for charitable contribution deductions, a private foundation must include restrictions on its activities in its governing instrument (articles of organization). I.R.C. §508(e). The foundation's article of organization must include specific provisions prohibiting it from engaging in any act or failure to act which gives rise to one or more of the taxes under I.R.C. §§4941-4945. However, the articles of organization will meet charter requirements if state law imposes the above prohibitions or treats them as contained in the instrument. Generally, specific reference to the above sections of the Code must be included in the instrument. If a foundation which had been classified as a public foundation under Section 509(a)(1) through (a)(4) subsequently loses that status and becomes a private foundation, the organization has one year to meet the charter requirements of Section 508(e). Treas. Reg. §1.508-3(b).

In addition, a private foundation is required to file or make available an annual report and submit detailed information on an annual exempt organizations return (Form 990PF). I.R.C. §6033.

c. Restrictions on Contributions by Institutions to Private Foundations

A grant from a private foundation to another private foundation requires the granting foundation to exercise "expenditure responsiblity". A grant from a private foundation to a public charity is not subject to this requirement. If a private foundation does not fulfill its expenditure responsibility when it contributes to a private foundation or a private operating foundation, the contribution will be deemed a taxable expenditure and will be taxed accordingly. I.R.C. §4945.

Under I.R.C. §4942, a private foundation must distribute its income, but a contribution to another private foundation does not constitute such an income distribution. A private foundation may make a contribution to another private foundation, but it may only be made in addition to qualified distributions that meet the minimum payout requirement.

d. Restrictions on Contributions by Individuals to Private Foundations

A contribution from an individual to a private foundation is subject to a 20% of contribution base limitation whereas a 50% of contribution base limitation applies to contributions to public charities, private operating foundations, and certain private nonoperating foundations that distribute the contributions they receive to public charities and private operating foundations. I.R.C. §170. A contribution of appreciated property (which qualifies as capital gain property) is subject to a 30% of contribution base limitation if made to a public charity or private operating foundation; a 20% limitation applies if the contribution is made to a private nonoperating foundation. I.R.C. §170. A further important consideration for donors is the operation of carryover provisions. Donors can carry over excess unused charitable deductions when the contributions are made to public charities and private operating foundations, but donors cannot carry over contributions to private nonoperating foundations.

II. Private Operating Foundation Restrictions and Requirements

There are significant differences between public and private foundations; private operating foundations fall between the two in terms of requirements and restrictions. Private operating foundations are treated, for the most part, like other private foundations. However, on several issues, they are treated like public foundations.

Private operating foundations are subject to the provisions discussed above as to (1) tax on investment income, (2) prohibitions on self-dealing, (3) tax on excess business holdings, (4) tax on investments which jeopardize charitable purposes, (5) tax on taxable expenditures, and (6) the governing instruments and reporting requirements.

A private operating foundation is not subject to tax for failure to distribute income. Also, as noted above, contributions to a private operating foundation are subject to a 50% of contribution base limit for cash and unappreciated property and a 30% limit for appreciated property. Also donors can carry over excess deductions for contributions made to private operating foundations.

Thus, while the private operating foundation restrictions are not as burdensome as the private foundation restrictions, they do constrain the foundation's actions. Because of these restrictions, a charitable organization will attempt to avoid both private foundation and private operating foundation status if at all possible.

C. 1. ARE ANY STATUTORY DEFINITIONS OF DISQUALIFIED PERSONS UNNECESSARILY STRINGENT OR OVERBROAD? 2. IF SO, WHAT DEFINITIONS ARE THEY AND HOW SHOULD THEY BE LIMITED?

Section 509(a)(2) organizations must normally receive more than one-third of their support in each taxable year from any combination of contributions[2] and gross receipts[3] from persons other than disqualified persons as described in Section 4946. IRC §509(a)(2)(A)(ii). Receipts from disqualified persons are added to the denominator of the one-third of support fraction, thus increasing the total support for the year, but are excluded from the numerator of the fraction, thus reducing the amount of support from qualified persons for the year.

Section 4946 sets forth the various classes of persons who are disqualified persons. Section 4946(a)(1)(i) makes reference to the class of disqualified person most important to URANTIA, i.e. the substantial contributor. The term substantial contributor is, however, defined in Section 507(d)(2).

In Section 507(d)(2), a substantial contributor is defined as any person who contributed or bequeathed an aggregate amount of more than $5,000 to a foundation, if such amount is more than 2 percent of the total contributions or bequests received by the foundation before the close of its taxable year in which such person's contribution or bequest is received.

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[2] This includes gifts, grants and membership fees.

[3] This includes receipts from admissions, sales of merchandise, performance of services or furnishing of services in an activity which is not an unrelated trade or business.

One of URANTIA's complaints about the disqualified person definition lies with the treatment of persons who become disqualified because they are "substantial contributors." The problem is that once substantial contributor status is reached, it is never lost for purposes of the Section 509(a)(2) public support test.[4] Thus once a person becomes a substantial contributor with respect to a Section 509(a)(2) organization, no matter how many years pass or how large the organization grows, contributions from that person will for all time be tainted and not be counted as support from the public. This rule especially penalizes persons who contribute amounts in the early years of an organization when its total amount of support may be small and makes no allowance for the overall growth of the organization's support in future years and the corresponding decrease in significance of a substantial contributor's contributions to the organization.

Another of URANTIA's complaints is that substantial contributors[5] to Section 509(a)(1) organizations are treated in a more favorable manner than substantial contributors to 509(a)(2) organizations in the following respects:

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[4] Section 507(d)(2)(B)(iv) states that "any person who is a substantial contributor on any date shall remain a substantial contributor for all subsequent periods."

[5] The term substantial contributor itself is not used in Reg. §1.170A-9(e)(6), but the concept is.

> (1) Contributions from each contributor (after taking the attribution rules into account) are included in the numerator of the foundation's support fraction up to 2 percent of total support over the four year period, while under §509(a)(2) contributions from substantial contributors are disregarded entirely; and
>
> (2) Support from persons who have made more than 2 percent of all contributions received by an organization as of the end of the taxable year continues to be counted, whereas under §509(a)(2) support from substantial contributors is thereafter permanently excluded for all purposes. Reg. §1.170A-9(e)(6).

URANTIA submits that there is no good reason why persons who are substantial contributors under Section 509(a)(2) should be treated more harshly than persons who are substantial contributors under Section 509(a)(1) and that the most equitable policy is to amend the Section 507(d)(2) definition of substantial contributor to replace the "once a substantial contributor always a substantial contributor" rule with a rule that would allow a person's substantial contributor status to fluctuate from year to year as is the case for Section 509(a)(1) organizations governed by Reg. §1.170A-9(e)(6). For example, "A" may be a substantial contributor in year 5 because his aggregate contributors from the beginning of the foundation's existence have exceeded $5,000 and 2% of the total contributions received by the foundation before the close of the taxable year. In year 7, A's contributions from the beginning of the foundation's existence may no longer exceed 2% of the foundation's total contributions and therefore A will no longer be treated as a substantial contributor for that year. In year

8, however, A may then again become a substantial contributor by making a contribution which when aggregated with his past gifts exceeds 2% of the foundation's total contributions.

URANTIA further submits that for purposes of the 509(a)(2) one-third public support test only those amounts in excess of the 2% of total support from a substantial contributor as determined from year to year should be excluded from the numerator of a foundation's public support fraction for the year and not the entire amount of the substantial contributor's contribution for the year.

Section 507(d)(2)(B)(iv) should be amended by adding the following underlined language:

> "(iv) any person who is a substantial contributor on any date shall remain a substantial contributor for all subsequent periods, except that for purposes of the one-third support test of section 509(a)(2) a person's substantial contributor status shall be determined from year to year." IRC §507(d)(2)(B)(iv).

In order to reduce the differences between substantial contributors under 509(a)(1) and under 509(a)(2), Section 509(a) also should be amended by adding a new Section 509(a)(2)(C) as follows:

> "(C) For purposes of this paragraph, contributions and bequests from a person who is a disqualified person as defined in section 4946, because he is a substantial contributor as defined in section 507(d)(2), shall be excluded from the numerator of the one-third of support fraction under section 509(a)(2)(A) only to the extent that the contribution exceeds 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person." IRC §509(a)(2)(C).

D. IS THE AVAILABILITY OF THE DECLARATORY JUDGEMENT PROCEDURE TOO RESTRICTIVE?

In continuing qualification and continuing classification situations, the courts have interpreted Section 7428 as allowing declaratory judgment review of Internal Revenue Service rulings which revoke or otherwise change an organization's qualification or classification. The courts have held that Internal Revenue Service rulings which adversely affect an organization's continuing qualification or classification, but which do not rise to the level of a revocation or other such change, are not entitled to declaratory judgment review under Section 7428.

URANTIA Foundation's losing fight to obtain declaratory judgment relief from an adverse Internal Revenue Service ruling which affected its continuing classification as a nonprivate foundation under Section 509(a) exemplifies the court's restrictive interpretation of Section 7428(a). The story behind URANTIA's unsuccessful attempt to obtain declaratory judgment feview under Section 7428(a) is as follows.

Under Section 509(a)(2), receipts from any person which exceed $5000 or 1% of an organization's support in a taxable year are treated as not being from the public. URANTIA's method of distribution for the Book is to sell the Book to bookstores for resale to the public, the customers of the bookstores. Due to the fact that large chain bookstores began replacing the small "mom and pop" bookstores, URANTIA found itself selling more and more volumes to chain bookstores such as Waldenbooks and Dalton's. Such sales began to exceed the $5,000 and 1% support limitation and began to erode URANTIA's ability to meet the Section 509(a)(2) nonprivate foundation test, i.e., that it normally receives more than 1/3 of its support from the public.

As a result of URANTIA's concerns about the problems with the $5,000 or 1% of support test caused by the sales to the chain bookstores, URANTIA requested a ruling from the IRS that for purposes of the $5,000 or 1% of support test, the customers of the bookstores should be treated as the persons from whom the receipts were received and not the chain bookstores themselves. However, the IRS denied URANTIA's request and instead issued a ruling requiring URANTIA to treat the chain bookstores, and not their customers, as persons for purposes of the $5,000 or 1% support limitation. URANTIA believed that if it continued to report the receipts from its sales to the chain bookstores as required by the IRS ruling, some day that method of reporting would result in its failing to meet the 509(a)(2) public support test and therefore cause it to have its continuing classification revoked.

URANTIA thus sought a declaratory judgment from the United States Tax Court. Unfortunately, the Tax Court held that Section 7428 of The Internal Revenue Code of 1954, as amended, did not grant it jurisdiction to issue a declaratory judgment in URANTIA's case. URANTIA Foundation v. Commissioner, 77 TC 507 (1981). The Tax Court was upheld by the United

States Court of Appeals for the Seventh Circuit in URANTIA Foundation v. Commissioner, 684 F.2d 521 (7th Cir., 1982).

The exact language of Section 7428(a) is as follows:

> (a) CREATION OF REMEDY - In a case of actual controversy involving -
>
> (1) a determination by the Secretary -
>
> (A) with respect to the initial qualification of an organization as an organization described in section 501(c)(3) which is exempt from tax under section 501(a) or as an organization described in section 170(c)(2),
>
> (B) with respect to the initial classification of an organization as a private foundation (as defined in section 509(a)), or
>
> (C) with respect to the initial classification of an organization as a private operating foundation (as defined in section 4942(j)(3)), or
>
> (2) a failure by the Secretary to make a determination with respect to an issue referred to in paragraph (1),
>
> upon the filing of an appropriate pleading, the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia may make a declaration with respect to such initial qualification or continuing qualification or with respect to such initial classification or continuing classification. Any such declaration shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Claims, as the case may be, and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification.

Section 7428(a) applies to two separate situations involving exempt organizations:

1. Denial of Initial Qualification or Classification; and

2. Revocation of Continuing Qualification or Classification.

Since URANTIA's experience is with the continuing classification problems of declaratory judgment relief, it intends to limit its comments to the continuing classification issue.

URANTIA contends that continuing classification problems are not adequately covered by Section 7428(a) as interpreted by the IRS and the courts. The IRS's position which has been supported by the courts is that no ruling issued by the IRS regarding an organization's continuing classification can be subject to a declaratory judgment unless the ruling revokes an organization's nonprivate foundation classification or exempt organization status.

URANTIA's position is that there are many rulings issued by the IRS which, even though they do not revoke an organization's classification, are so adverse to the organization's method of operating that the ruling places the organization in jeopardy of losing its classification unless it changes its method of operation.

Since the courts have declined to accept declaratory judgment jurisdiction in continuing classification situations in cases where the organization's classification has not been revoked, (1) the organization must then decide whether to risk its nonprivate foundation classification by proceeding forward with its present method of operation and by hoping that when the IRS revokes its classification that a court will find that the IRS is wrong, or (2) the organization must capitulate to the IRS and change its present method of operation, all the while believing that it is right, but doing so merely to avoid the jeopardy situation of having its classification revoked and then risking a court determination of its status after the fact.

In order to prevent the jeopardy situations described above from occuring, Section 7428(a) must be amended to give exempt organizations access to prompt review of adverse IRS rulings. The last sentence of Section 7428(a) should be amended by adding the following underlined language:

> "For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any ruling which revokes or otherwise changes a qualification or classification and any ruling which may lead to a revocation or other change in a qualification or classification."

E. IS THE 10-PERCENT PUBLIC SUPPORT TEST SET FORTH IN THE REGULATIONS RELATING TO THE DEFINITION OF PRIVATE FOUNDATIONS TOO RESTRICTIVE?

Section 509 defines the term private foundation. All 501(c)(3) organizations are private foundations under Section 509 unless they meet one of the four exceptions under subparagraph (a).

The 10-percent public support test is only one part of an alternate test to determine whether an organization is a Section 170(b)(1)(A)(vi) organization. Reg. §1.170A-9(e). If an organization meets the primary public support test, or the alternate public support test of Reg. §1.170A-9(e), it will be exempt under 501(c)(3) and also will be classified as a nonprivate foundation under Section 509(a)(1).

URANTIA believes that the scope of the Subcommittee's inquiry on this issue should not be limited to the 10-percent public support test under Reg. §1.170A-9(e) and therefore wishes to comment on the public support test of Section 509(a)(2) under which URANTIA presently receives its nonprivate foundation classification.

An organization qualifies for a 509(a)(2) nonprivate foundation exemption if it meets the test commonly called the 509(a)(2) public support test. In order for an organization to meet the 509(a)(2) public support test, it must normally receive (1) more than one-third of its support[6] from the public and (2) less than one-third of its support from gross investment income and net unrelated business income. Support from any person in excess of $5,000 or 1 percent of the organization's total support for the taxable year is treated as not being from the public. Section 509(a)(2)(A)(ii).

> The one-third support test and the one-third gross investment income test are designed to insure that an organization which is excluded from private foundation status under section 509(a)(2) is responsive to the general public, rather than to the private interests of a limited number of donors or other persons. Regs. 1.509(a)-3(a)(3).

501(c)(3) organizations which receive a significant amount of support from sales of merchandise, etc. often have a difficult time meeting the 509(a)(2) public support test if there is a middleman involved. This is because sales to any person (including the middleman) in excess of $5,000 or 1 percent of the organization's support in the taxable year are treated as not being from the public.

The Internal Revenue Service's present position is that each middleman entity, corporate or otherwise, no matter how large or small, is a "person" for purposes of the $5,000 or 1 percent from any person test. See IRS letter ruling attached as exhibit "A". For example, as a result of the IRS's present interpretation of the term "person", 501(c)(3) organizations such as URANTIA whose purpose for existence is to distribute a religious and philosophical book to the public are being hurt. As long as the 501(c)(3) organization sells small amounts of the book to individuals or to small corporate bookstores, the $5,000 or 1 percent from any person test does not appear to be a problem. However, if the Book is popular with the public and many volumes of the Book are purchased by large corporate chain bookstores such as Waldenbooks or Dalton's for distribution to the public through their several hundred nationwide outlets, 501(c)(3) organizations have a significant problem with the $5,000 or 1 percent from any person test. This is so because under the IRS interpretation a sale of books to a corporate chain bookstore, regardless of the size or number of outlets it has, is treated as a sale to one person, the corporation.

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[6] Support includes gifts, grants, contributions and membership fees, and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in an activity which is not an unrelated trade or business.

We believe that the proper interpretation of the term "person" is that it means the customers of the chain bookstores and not the chain bookstores themselves. The chain bookstores are middlemen and not the ultimate consumers of the books. They merely purchase the books for resale to their customers, i.e. the reading public, which is the ultimate consumer.

The rationale for excepting organizations from the definition of private foundation was described in the recent case of Wm. F. Quarrie, Mable E. Quarrie, Etc. v. C.I.R., 603 F.2d 1274, 1277-1278 (7th Cir. 1979) in which the Court of Appeals observed that:

> Public charities were excepted from private foundation status on the theory that their exposure to public scrutiny and their dependence on public support would keep them from the abuses to which private foundations were subject.

In footnote 3 of its Quarrie opinion, the Court of Appeals cited to the Tax Reform Act of 1969 for additional discussion of the purpose for exempting publicly supported organizations. The Court of Appeals concluded that:

> The statutory definition of "private foundation" reflects an underlying congressional philosophy which turns upon a very crucial distinction between organizations that are privately financed and those that depend upon the public for their support. In the latter case, the organization is subject to the discipline of public opinion. If it misbehaves, misuses its capital, or engages in questionable practices, the public will presumably learn about it, and by the simple expedient of cutting off contributions, correct that which has become offensive. On the other hand, the institution that is privately financed is subject to no such corrective influence and therefore must be regulated in some other way. The Tax Reform Act of 1969, (Washington, American Enterprise Institute, 1974), 45-46. Quarrie v. C.I.R. at 1277-1278.

The chain bookstores have only one purpose and that is to make a profit by purchasing the Book at wholesale and selling it to the public at retail. If their customers stop purchasing the Book, the chain bookstores will stop purchasing the Book and will return any unsold volumes to the 501(c)(3) organization for a refund. Therefore, the public through the medium of the profit minded chain bookstores exercises effective control over the actions of any 501(c)(3) organization which distributes books.

In light of the IRS's position that it believes that the chain bookstores and not its customers are the "persons" referred to in Section 509(a)(2)(A)(ii), we believe that Section 509 must be amended by adding a new Section 509(f) as follows:

> "(f) Definition of Person - For purposes of subsection (a)(2)(A)(ii) the term 'person' shall mean the customers of a business which purchases merchandise from a 501(c)(3) organization for resale to the public."

A second problem with the Section 509(a)(2)(A)(ii) test is that its present dollar limits are too low. Given the fact that inflation has decreased the value of the dollar since 1969 (the year the present private foundation rules were introduced into the Internal Revenue Code), the $5,000 per person limitation should be raised to at least $15,000. For example, the $3,000 annual gift tax exclusion of Section 2503 was raised by the Economic Recovery Tax Act of 1981 to $10,000, a more than three fold increase.

A third problem with Section 509(a)(2) is that its percent of support test for receipts is limited to 1% of its support in the taxable year. URANTIA believes that the 2% of support limitation used for substantial contributors under 509(a)(1) and 509(a)(2) seems more appropriate. See 507(d) and Reg. §1.170A-9(e)(6)(i).

In light of the fact that the $5,000 and 1 percent limitation are too low, we believe that Section 509(a)(2)(A)(ii) should be amended by changing the "5,000" limit to "$15,000" and the "1 percent" limit to "2 percent".

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:

E:EO:T:R:1-2

Date: NOV 13 1980

Urantia Foundation
533 Diversey Parkway
Chicago, IL 60614

EIN: 36-2345086
KD: 36

Dear Sir or Madam:

This is in response to your letter dated May 8, 1980, requesting a ruling.

The information submitted indicates that you have been recognized as exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1954. You have been determined to be other than a private foundation under the provisions of section 509(a)(2) of the Code.

You are requesting a ruling that the customers of the multistate chain bookstores to whom you sell your book, and not the chain stores themselves, are the "persons" described in Code section 509(a)(2)(A)(ii) whom you must take into account in determining whether you have received more that $5,000 or one percent of your organization's support in a taxable year from "any person."

You have indicated that the nature of the bookstore business is rapidly changing with large chain stores capturing an increasingly larger share of the bookstore market. You state that in the past, you would sell your book to many individual stores,but with the advent of these large chainstores purchasing for their outlets,it has consolidated the purchases into a lump sum from one source which could, if considered the "person" under Code section 509(a)(2), affect your status as a publicly-supported organization.

Your organization will institute an unconditional returns policy which allows the bookstores to return copies of your book at any time for any reason. There is no minimum or maximum holding period before which the books may be returned. There are no preconditons before return. The chainstores will receive a full cash refund for the amount they originally paid for the book.

You have attempted to determine if the chainstores will enter into a consignment agreement with you. The chainstores refuied to enter into such an agreement and you have determined that there is no such agreement in existence in the book publishing industry.

EXHIBIT A

You have analogized your situation to that of the blood bank in Rev. Rul. 75-387, 1975-2, C.B. 216, where the blood bank was held to be operating in an agency relationship with several hospitals thereby enabling the payments, for blood, from the hospitals to be considered as paid by the individual patients.

Section 509(a)(2) of the Code, in pertinent part, describes an organization which (A) normally receives more than one-third of its support in each taxable year from any combination of gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, not including such receipts from any person in any taxable year to the extent such receipts exceed the greater of $5,000 or one percent of the organization's support in such taxable year, and (B) normally receives not more than one-third of its support in each taxable year from gross investment income.

Restatement (Second) of Agency section 14 J (1958) states, "one who receives goods from another for resale to a third person is not thereby the other's agent in the transaction: whether he is an agent for this purpose or is himself a buyer depends upon whether the parties agree that his duty is to act primarily for the benefit of the one delivering the goods to him or is to act primarily for his own benefit."

The question to be resolved is whether an agency type relationship exists between your organization and the chainstores that would allow purchases of your book to be considered as made directly by the individual purchasers.

You have stated that you and the chainstores did not intend to engage in an agency relationship. However, you are willing to institute an unconditional returns policy, because the chainstores will not enter into a consignment agreement.

Legal title to the books will pass to the chain bookstores upon the initial transfer of the books, but will revert to you if the books are returned.

It appears that no agency relationship exists as the sales of books are through ordinary commercial channels with the bookstores acting primarily for their own benefit, as shown by the fact that they will not enter into a consignment agreement. The mere presence of a returns policy does not take your relationship with the chain bookstores out of the ambit of being considered as an ordinary commercial, buyer-seller activity.

We, therefore, rule that the chain bookstores and not the individual purchasers, are the persons described in section 509(a)(2) of the Code and that sales to them must be taken into consideration when applying the public support test of section 509(a)(2) of the Code.

Sincerely yours,
(Signed) J. E. Griffith

J. E. Griffith
Chief, Rulings Section 1
Exempt Organizations
Technical Branch

Chairman RANGEL. The witnesses can use their time any way that they want, but the full statements are included in the record. We have received them earlier, and the members have read them.

Mr. Roach and Ms. Broccolo?

STATEMENTS OF BERNADETTE M. BROCCOLO, ESQ., AND WILLIAM H. ROACH, JR., ESQ., GARDNER, CARTON & DOUGLAS, CHICAGO, ILL.

Ms. BROCCOLO. Thank you, Mr. Chairman. I am an attorney with the Chicago law firm of Gardner, Carton & Douglas, and I am here today with my colleague, William Roach, to discuss the nonprivate foundation status of organizations created as part of hospital corporate reorganizations.

We appreciate this opportunity to testify. I will begin by giving some background on hospital corporate reorganization and the private foundation rules we are concerned with here today.

Hospitals throughout the country have lawfully undertaken corporate reorganizations to maintain and enhance their ability to provide comprehensively a broad range of quality health care and community services. Their communities have demanded these services, but several indicators suggest that hospitals can no longer provide a broad range of health and community services within their single corporation structure; therefore, hospitals have diversified their activities and are now lawfully pursuing them in a variety of corporate systems to support the mission of providing quality health care to their communities.

In a typical hospital corporate reorganization, an existing section 501(c)(3) hospital creates a family of exempt corporations to perform integral and essential functions previously carried on by the hospital corporation in furtherance of its exempt purposes. A typical corporate structure resulting from a corporate reorganization includes a section 501(c)(3) hospital, a tax-exempt fund-raising organization, a tax-exempt real estate holding company, a human services corporation, and a taxable business corporation, all controlled by a tax-exempt parent corporation as the sole corporate member or sole shareholder.

The hospital remains the focus of the system to assure the responsiveness of all organizations to the hospital and to the community the hospital serves. All exempt organizations are closely related to the hospital through similarity of purpose and formal corporate affiliation. The charitable purposes of the parent and all the hospital's exempt affiliates are consistent with the purposes of the hospital. The services and support the exempt affiliates provide to one another and the charitable programs they provide directly to the community, are directed and focused toward the efficient accomplishment of their primary mission of promoting the community health.

Further assurance of their responsiveness lies in the fact that these exempt organizations create boards of directors which consist primarily of independent civic leaders who serve in such capacity as unpaid volunteers committed to the purpose of providing health and human services. The representatives of the hospital's board typically serve on the board of the parent to provide assurance that the hospital has a voice in the operation of the entire system.

The parent has overall control over all organizations through the exercise of powers reserved in the articles of incorporation and bylaws of its subsidiaries. Such powers include the power to approve amendments to articles and bylaws, appointment of chief executive officers, transfer of assets, debts incurred in excess of stated levels, and capital expenditures in excess of certain dollar limitations.

We are concerned with the rules for qualifying for exclusion from private foundation status as they apply to the exempt corporations created as part of hospital corporate reorganizations.

In addition to churches, hospitals and medical research organizations, section 509(a) excludes from the definition of private foundation organizations that receive substantial support from the public and organizations that support publicly supported organizations. The rationale for excepting these organizations from the definition of private foundation is that their exposure to public scrutiny and reliance on public support assure the use of their assets for the public benefits which justify their section 501(c)(3) status. In contrast, organizations that are subject to no such influence must be regulated in some other way.

The detailed rules for qualifying for exclusion from private foundations status were intended to assure this responsiveness. However, these rules are currently working against the ability of exempt corporations created by hospitals to achieve nonprivate foundation status even though such organizations were organized primarily to conduct or support activities which promote the health and welfare of the community and which are responsive to the needs of the public. If these organizations are denied nonprivate foundation status, they will be unable to accomplish their charitable mission. Such a result subverts the legislative intent underlying the nonprivate foundation rules. Therefore, we propose that the organizations created as part of hospital reorganizations be granted similar nonprivate foundation status to the hospitals that create them by giving them a specific exclusion from the definition of private foundation under section 509(a).

Mr. Roach will discuss this recommendation.

Mr. Roach. Mr. Chairman, my name is William Roach. I am a partner in the law firm of Gardner, Carton & Douglas.

I would like to add that the major impediments our clients are finding in qualifying these tax-exempt hospital affiliates under section 509(a) (1) and (2) are limitations on contributions or gross receipts from a single source. This is creating financial inflexibility with regard to intercompany transfers among these exempt organizations which limits the ability of the hospital system to meet the hospital's overall goal of providing services and reducing health care costs.

Section 509(a)(3), which is another option, is also restrictive because it limits the purposes for which these hospital affiliates can operate.

We have submitted to you, in our written testimony, specific recommendations for your consideration.

Basically, what we have asked the subcommittee to do is consider amending two sections of the Internal Revenue Code, which would permit these hospital affiliates to achieve a specific exemption under section 509(a), and we are proposing an additional subsection, subsection 4, which would permit this.

We appreciate the opportunity of coming before you to advise you of the problems our clients face, and would be happy to answer any questions you might have, Mr. Chairman.

[The prepared statement of Mr. Roach and Ms. Broccolo follows:]

STATEMENT OF WILLIAM H. ROACH, JR., AND BERNADETTE M. BROCCOLO, ON BEHALF OF VARIOUS HOSPITAL CLIENTS

Good morning [afternoon], Mr. Chairman. We appreciate having the opportunity to testify before you concerning the nonprivate foundation status of organizations that are created as part of hospital corporate reorganizations. Gardner, Carton & Douglas was founded in 1910 and today consists of 103 attorneys with our main office in Chicago and additional offices in Washington, D.C., and Libertyville, Illinois. We come before you today on behalf of our hospital clients which number over 100, operating in over 25 states.

Hospital Corporate Reorganization

Hospitals throughout the country have lawfully undertaken corporate reorganizations to maintain and enhance their ability to provide, more efficiently, comprehensively and cost-effectively, a broad range of quality health care and community services to the communities they serve. All indicators (the economy, present and proposed reimbursement systems, an aging population, competition in the health industry and decreasing philanthropy) portend that hospitals will be unable to provide the current level of health and other community services within a single corporate structure. Therefore, hospitals are diversifying their activities, lawfully pursuing other activities in a variety of corporate systems, all seeking to support the mission of providing quality health care to their communities. The Internal Revenue Service (the "IRS") has recognized and approved hospital corporate restructurings as a means of assuring continued performance of the charitable activities conducted by modern acute care hospitals.

In a typical corporate reorganization, an existing §501(c)(3) hospital creates a family of exempt corporations to perform integral and essential functions previously carried on by a hospital corporation in furtherance of its exempt purposes. A typical corporate structure resulting from a hospital corporate reorganization often includes a tax-exempt hospital (the "Hospital"), tax-exempt fund raising foundation (the "Foundation"), tax-exempt real estate holding company (the "Real Estate Holding Company"), and a taxable business corporation, all controlled by a tax-exempt parent corporation (the "Parent") as the sole corporate member or sole shareholder. Model 1 of Exhibit A, which you have before you, describes this typical corporate structure.

In addition to the Parent, some hospitals create one or more organizations to serve as holding companies for the operating entities in the system. If there is more than one hospital or other health care entity in the system, the

Hospital might create an organization to serve as the holding company for all health care entities. A second organization might be created to serve as holding company for the Foundation, Human Services Corporation and taxable business corporation (the "Human Services Holding Company"). Model 2 of Exhibit A demonstrates this structure. If the Hospital is the only health care provider in the system, the Hospital might create only the Human Services Holding Company. Model 3 of Exhibit A demonstrates this structure. In some cases, these more complex reorganized systems better enable hospitals to achieve their reorganization goals.

The Parent would provide the overall direction and control to all entities within the Hospital's corporate family. Its principal functions would be to support the Hospital and other exempt organizations which join the system by coordinating the policy-making and long-range strategic planning for the system, providing essential managerial and other support services to the Hospital and other exempt organizations that join the system, formulating relationships within the system and representing the system before governmental, industry and citizen groups. The Foundation would engage primarily in raising funds in support of and for the benefit of the Hospital and other exempt organizations in the system. The Real Estate Holding Company would hold title to, maintain and develop certain real properties for the exclusive support and benefit of the Hospital and other exempt organizations in the system. The Real Estate Holding Company would use the income it generates from its real estate holdings to support the charitable purposes of the Hospital and other exempt organizations in the system through donations to such organizations or through reinvestment of such revenue to acquire or develop properties for use by its affiliated exempt organizations in furtherance of their charitable purposes. The taxable business corporation would operate a variety of businesses in support of physicians and other health care providers, such as administrative support services and laboratory radiology services.

In the more complex reorganized systems consisting of multiple holding companies, the Provider Holding Company and the Human Services Holding Company may own all or some of the assets of their operating subsidiaries, and exercise control over and coordinate policy-making and planning for their operating subsidiaries. The Human Services Holding Company may also conduct a variety of broadly based community charitable services.

The Hospital remains the focus of the system. All exempt organizations are closely related to the Hospital through similarity of purposes and formal corporate affiliation so as to assure their responsiveness to the needs of the Hospital and, therefore, to the public it serves. The charitable purposes of the Parent and all the Hospital's exempt affiliates are consistent with the purposes of the Hospital. The services and support the exempt affiliates provide to the Hospital and to one another and the charitable programs they provide directly to the community are directed and focused toward the efficient and effective accomplishment of their common primary mission of promoting the health and welfare of the community.

In addition to the relationships established through corporate purposes and affiliations, the exempt organizations in the system, including the Parent, establish boards of directors which consist primarily of independent civic leaders who serve in such capacity as unpaid volunteers committed to the purpose of providing health and human services. Moreover, representatives on the Hospital's board of directors serve on the board of directors of the Parent. Such representation gives individuals from the Hospital's board a voice in the operation of the entire system.

All system organizations are subject to the overall direction and control of the Parent. The Parent accomplishes this by exercising powers reserved to it in the articles of incorporation and bylaws of system organizations. As the organization summaries in Exhibit B show, these powers include the appointment of subsidiary directors, approval of changes to articles of incorporation and corporate bylaws, approval of debt incurred in excess of stated levels and other powers necessary to unify the Hospital's corporate system and keep it moving toward common objectives.

We have worked with hospitals in the 29 states listed in Exhibit C, but we assume, given the interest in the hospital industry in reorganization, that hospitals in all states are restructuring.

Private Foundation Rules that Affect These Hospital Reorganizations

All organizations exempt from federal income tax under §501(c)(3) of the Internal Revenue Code of 1954, as amended (the "IRC"), are considered private foundations and subject to restrictions against self-dealing and accumulation of income and to certain excise taxes, unless they qualify for one of the exclusions from private foundation status under IRC §509(a). We are concerned about the rules for qualifying for these exclusions from private foundation status.

Section 509(a) excludes from the definition of private foundation and, therefore, from the application of the restrictive rules governing private foundations, the following organizations: (i) a church, (ii) a hospital or a medical research organization operated in conjunction with a hospital;

(iii) an organization operated for the benefit of certain state and municipal colleges and universities, (iv) a governmental unit, (v) organizations which normally receive a substantial part of their support from the general public or from governmental bodies, (vi) organizations organized and operated for the benefit of organizations described in (i) through (v) above, and (vii) organizations whose purpose is testing for public safety. The rationale for excepting these organizatons from the definition of private foundation is that their exposure to public scrutiny and reliance on public support insure the use of their assets for the public benefits which justify their status as §501(c)(3) organizations. If these organizations misbehave, misuse their capital, or engage in questionable practices, the public will presumably learn about it and by the simple expedient of cutting off contributions, correct that which has become offensive. In contrast, organizations that are privately financed are subject to no such influence and, therefore, must be regulated in some other way.

The detailed rules for qualifying for exclusion from nonprivate foundation status were intended to insure the responsiveness of such organizations to the needs of the public, rather than to the private interest of a limited number of donors or other persons. However, as discussed below, these rules actually work against the ability of exempt corporations created by hospitals as part of corporate reorganizations to achieve nonprivate foundation status, even though such corporations were organized primarily to conduct or support activities which promote the health and welfare of the community and, by virtue of their organization and relationship to such hospitals and other §501(c)(3), §509(a)(1) organizations, are responsive to the needs of the public.

If new tax-exempt organizations created as part of hospital corporate reorganizations are unable to qualify for nonprivate foundation status they will be subject to the restrictions imposed upon private foundations and prevented from effectively fulfilling their own charitable purposes and those of related tax-exempt hospital corporations. Such a result subverts the legislative intent underlying the §509(a) nonprivate foundation rules. Such organizations should be afforded the same nonprivate foundation status as the hospitals that create them. Accordingly, we respectfully recommend that §509(a) of the IRC be amended expressly to exclude such organizations from the definition of private foundation. We will discuss this recommendation in more detail in a moment.

Problems Encountered in Applying These Rules to Hospital Reorganizations

The principal impediments to qualifying these exempt affiliates of the Hospital as §509(a)(1) or §509(a)(2) publicly supported organizations are the 2.0% limitation on contributions from a single source and the 1.0% limitation on gross receipts from a single source. These limitations restrict the financial flexibility of reorganized hospital systems and, therefore, the ability of those systems to accomplish their overall goals of reducing health care costs.

The close relationship between the Hospital and its exempt affiliates, which helps to assure their responsiveness to the Hospital and the public it serves, also should enable the exempt affiliates to attract public support on a continuing basis. However, in addition to seeking support directly from the public, it may be necessary at times for the exempt affiliates to provide financial support directly to one another through donations, shared services, etc., in order to accomplish more efficiently and effectively the Hospital's overall mission. This sharing of assets and services among the exempt organizations in the Hospital's reorganized system helps to assure their use of those assets for the public benefits which justify their exemption under §501(c)(3). For instance, the Hospital may donate cash to its exempt affiliates to provide the initial working capital needed by those organizations to commence operations. However, because of the 2.0% limitation on support from a single source, significant donations made by the Hospital to the Parent or other exempt affiliates to meet initial working capital needs could make it difficult for such organizations to satisfy the §509(a)(1) public support test. While there may be some relief from this unintended result under §170(b)(1)(a)(vi), most hospitals do not so qualify and instead achieve nonprivate foundation status under §170(b)(1)(a)(iii). Similarly, if the Parent derives significant gross receipts from the provision of management and other support services to its exempt affiliates, it could fail to satisfy the §509(a)(2) one-third public support test because of the 1.0% limitation on gross receipts derived from a single source.

Alternatively, to avoid having to satisfy these technical financial public support tests of §509(a)(1) and §509(a)(2), newly created exempt organizations in reorganized hospital systems have considered applying for §509(a)(3) nonprivate foundation status. However, because a §509(a)(3) nonprivate foundation must be organized and operated primarily for the benefit of specified §509(a)(1) and §509(a)(2) organizations, and neither the IRC nor the corresponding regulations expressly permit one §509(a)(3) foundation to donate funds or provide services to another §509(a)(3) nonprivate foundation, §509(a)(3) status may restrict or limit such essential financial transactions between §509(a)(3) organizations in the system, even though the ultimate purpose of such transactions is to benefit the Hospital and other specified §509(a)(1) and §509(a)(2) organizations in the Hospital reorganized system which the §509(a)(3) organizations are organized and operated to support. A restriction against asset transfers and sharing of services among §509(a)(3) organizations in the system could severely limit the financial flexibility necessary to carry out the charitable mission of the Hospital and its exempt affiliates. Particularly because all the §509(a)(3) organizations in the Hospital system would have consistent purposes and, therefore, would be organized to support the same specified §509(a)(1) and §509(a)(2) organizations, one §509(a)(3) nonprivate foundation in the system should be able to transfer assets to and provide services for another §509(a)(3) organization in the system for the purpose of benefitting indirectly those specified §509(a)(1) and §509(a)(2) nonprivate foundations. Moreover, these purpose limitations prevent a §509(a)(3) from providing charitable services that are not in direct support of the Hospital or other §509(a)(1) or (a)(2) organizations.

Private Foundation Status as an Alternative

"Private" foundation status has several disadvantages for reorganized hospital systems. Private foundations are subject to several taxes and restrictions not imposed upon "nonprivate foundations", including a 2.0% annual excise tax on net investment income, penalties for acts of self-dealing, restrictions on investment of foundation assets and restrictions on expenditures of foundation funds. These restrictions hinder financial interaction between organizations in a hospital system and, in so doing, limit a hospital's ability to generate new capital and to pursue other activities through the system that will reduce health care costs.

For example, the Parent, Human Services Holding Company or Business Corporation in a hospital system may sell services, once provided only by the Hospital for its own use, to a larger market, thereby reducing the unit cost of the service to the Hospital. This would be considered an act of self-dealing under the private foundation rules. In addition, the tax deduction available to individuals who make contributions to private foundations is limited to 20.0% of the individuals adjusted gross income, with no provision for a carryover of excess contributions. This limitation on donations would greatly restrict a system's ability to generate capital through philanthropy.

Responsiveness to Public Rather Than Private Interests

The Hospital's exempt affiliates are, by virtue of their organization and affiliation with the restructured hospital system, responsive to the public. The board of directors of these organizations are composed of individuals who are broadly representative of the community and include representation from the board of directors of the not-for-profit tax-exempt hospitals that created them. These organizations are not controlled by any individual or family. Rather, they are controlled by the Parent, which is a not-for-profit tax-exempt corporation which also controls the Hospital. The purposes of these organizations are consistent with those of the not-for-profit tax-exempt hospitals that created them. Consistent with such purposes, these organizations operate community-wide programs that the Hospital otherwise would undertake to provide with the limited financial resources available to it. Finally, because of the reporting requirements imposed upon these organizations under the charitable trust laws of most states, they are subject to continuous scrutiny by state attorneys general and secretaries of state.

Proposed Solution to These Problems

The rules for qualifying for nonprivate foundation status should accommodate, rather than hamper, the efforts of tax-exempt hospitals to provide more efficiently and effectively the broad range of community services which originally supported their status as §501(c)(3) tax-exempt organizations and as §509(a) nonprivate foundations. This can be accomplished by affording tax-exempt organizations, which are created by and affiliated with tax-exempt hospitals, to assist such hospitals in promoting the public health and welfare, the same nonprivate foundation status as the hospitals that create them, without requiring them to satisfy the current rules of §§509(a)(1), (2) or (3). This would be consistent with the IRS' practice of issuing determination letters to religiously group exempt organizations granting nonprivate foundation status under §509(a) without specific reference to §§509(a)(1), (2) or (3). Accordingly, §509(a) should expressly list such tax-exempt organizations as ones which are excluded from the definition of "private foundation".

We would recommend the following IRC revisions:

1. Revise §170(b)(1)(A) to include an additional Subsection (ix) which would describe organizations affiliated with organizations described in §§170(b)(1)(A)(iii) and (vi). To qualify for §§170(b)(1)(A)(ix) status, an organization would be required to submit annually a certification, signed by an authorized officer of an organization described in §170(b)(1)(A)(iii) or (vi), that:

a. The applicant is under common control or ownership with the certifying organization. This test should be broad enough to include any tax-exempt organization shown in Models 1, 2 and 3 in Exhibit A.

b. The applicant's corporate purposes are consistent with those of the certifying organization.

c. At least one member of the certifying organization's governing body also serves as a member, with or without vote, of the applicant's governing body.

d. The applicant is responsive to the interests of the public at large. Evidence of this responsiveness might include community representation on the applicant's governing body, receipt of financial support from the public, operation of community-wide services and support of an organization described in §509(a)(1), §509(a)(2) or §509(a)(3).

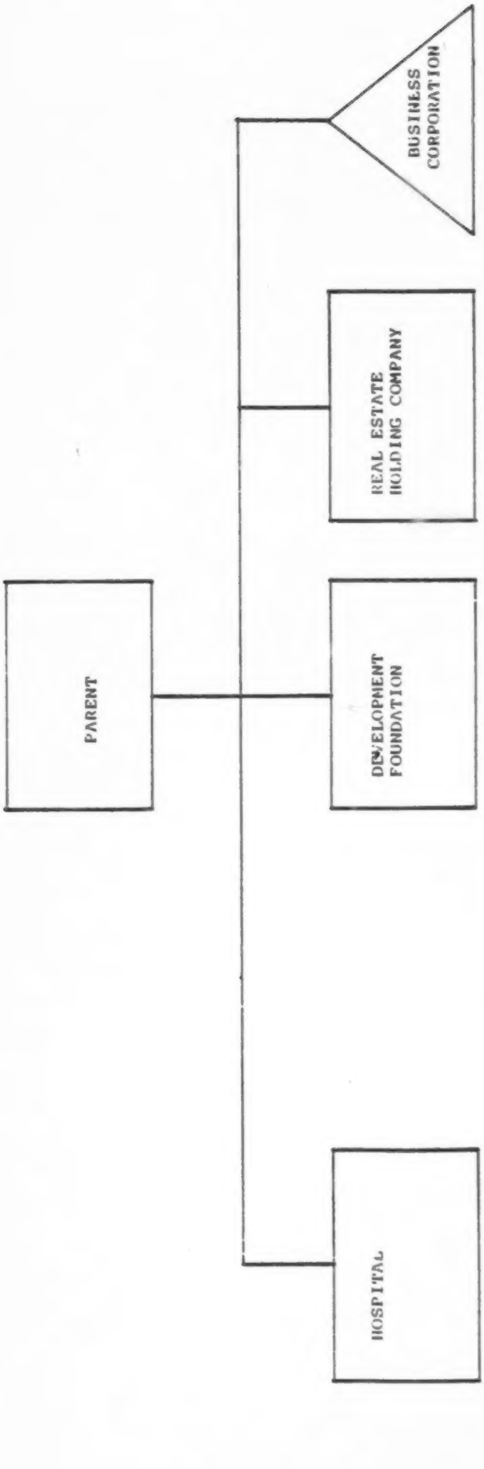
2. Add a new Subsection (4) to §509(a) which would include organizations described in Section 170(b)(1)(A)(ix).

These revisions would create a fourth option for organizations created as part of hospital corporate reorganizations to obtain nonprivate foundation status.

This concludes our formal testimony. We would be pleased to answer any questions you might have concerning the matters we have discussed.

Exhibit A

Model 1


PARENT
HOSPITAL
DEVELOPMENT FOUNDATION
REAL ESTATE HOLDING COMPANY
BUSINESS CORPORATION

Model 2

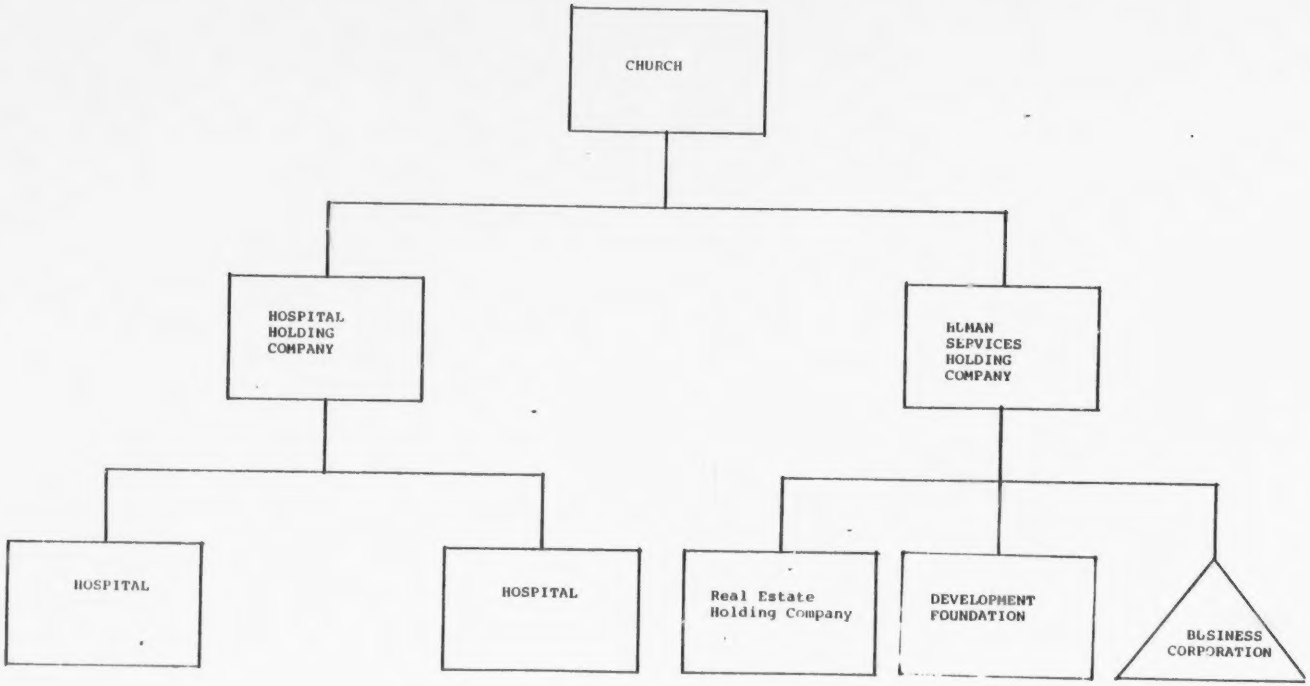

CHURCH
HOSPITAL HOLDING COMPANY
HUMAN SERVICES HOLDING COMPANY
HOSPITAL
HOSPITAL
Real Estate Holding Company
DEVELOPMENT FOUNDATION
BUSINESS CORPORATION

Exhibit A

Model 3

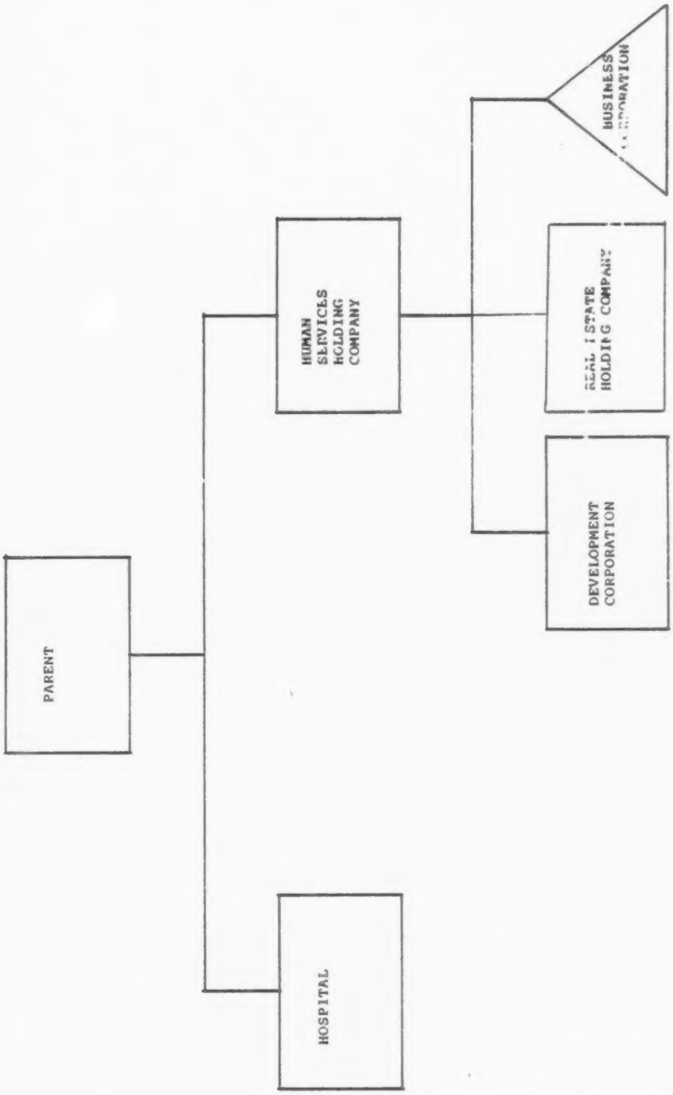

PARENT
HUMAN SERVICES HOLDING COMPANY
HOSPITAL
BUSINESS CORPORATION
REAL ESTATE HOLDING COMPANY
DEVELOPMENT CORPORATION

Exhibit A

Exhibit B

PARENT
CORPORATE SUMMARY

TYPE OF CORPORATION:	Not-for-Profit Corporation
TAX STATUS:	IRC §501(c)(3) tax-exempt Nonprivate foundation
MEMBERS:	Members of the Parent Board of Directors (i.e., self-perpetuating board)
DUTIES OF MEMBERS:	Appointment of directors as provided in bylaws and all other duties required or allowed by law to be exercised by members
DIRECTORS APPOINTED BY:	Members
SOLE MEMBER OF:	Model A: Hospital, Development Foundation, Real Estate Holding Company Model B: Hospital Holding Company, Human Services Holding Company Model C: Human Services Holding Company
SOLE SHAREHOLDER OF:	Model A: Business Corporation
DUTIES AS SUCH SOLE MEMBER AND SOLE SHAREHOLDER:	-Annually appoints directors -Nominates CEOs -Approves articles and bylaws changes -Approves debt incurred in excess of $5,000 -Approves transfers of assets to recipients outside of system -Approves mergers and liquidations -Approves creation of subsidiaries and controlled corporations -Approves budgets
PURPOSES AND FUNCTIONS:	Has broad charitable purposes, conducts selected exempt functions, exercises control over and coordinates policy-making and long-range planning for controlled tax-exempt corporations

Exhibit B

HOSPITAL
CORPORATE SUMMARY

TYPE OF CORPORATION:	Not-for-Profit Corporation
TAX STATUS:	IRC §501(c)(3) tax-exempt Nonprivate foundation
SOLE MEMBER:	Models A & C: Parent Model B: Hospital Holding Company
DUTIES OF SOLE MEMBER:	-Appoints directors -Annually nominates CEO -Approves articles and bylaws changes -Approves debt incurred in excess of $5,000 -Approves transfers of assets to recipients outside of system -Approves mergers and liquidations -Approves creation of subsidiaries and controlled corporations -Approves budgets
TRUSTEES APPOINTED/ ELECTED BY:	Member
SOLE MEMBER OF:	None
PURPOSES AND FUNCTIONS:	Owns and operates a hospital

Exhibit B

DEVELOPMENT FOUNDATION
CORPORATE SUMMARY

TYPE OF CORPORATION:	Not-for-Profit Corporation
TAX STATUS:	IRC §501(c)(3) tax-exempt Nonprivate foundation
SOLE MEMBER	Model A: Parent Models B & C: Human Services Holding Company
DUTIES OF SOLE MEMBER:	-Annually appoints directors -Annually nominates CEO -Approves articles and bylaws changes -Approves debt incurred in excess of $5,000 -Approves transfers of assets to recipients outside of system -Approves mergers and liquidations -Approves creation of subsidiaries and controlled corporations -Approves budgets
DIRECTORS APPOINTED/ ELECTED BY:	Member
SOLE MEMBER OF:	None
PURPOSES AND FUNCTIONS:	Raises money from the public to give to any other not-for-profit, tax-exempt organization affiliated with the Parent

Exhibit B

REAL ESTATE HOLDING COMPANY
CORPORATE SUMMARY

TYPE OF CORPORATION:	Not-for-Profit Corporation
TAX STATUS:	IRC §501(c)(3) tax-exempt Nonprivate foundation
MEMBER:	Model A: Parent Models B & C: Human Services Holding Company
DUTIES OF MEMBER:	-Appoints directors for staggered three year terms -Annually nominates CEO -Approves articles and bylaws changes -Approves debt incurred in excess of $5,000 -Approves transfers of assets to recipients outside of system -Approves mergers and liquidations -Approves creation of subsidiaries and controlled corporations -Approves of budgets
DIRECTORS APPOINTED BY:	Member
SOLE MEMBER OF:	None
SOLE SHAREHOLDER OF:	None
PURPOSES AND FUNCTIONS:	Has charitable purposes, conducts selected exempt functions

Exhibit B

BUSINESS CORPORATION CORPORATE SUMMARY

TYPE OF CORPORATION: Business Corporation

TAX STATUS: Taxable

SHAREOLDER: Model A: Parent
Model B & C: Human Services Holding Company

DUTIES OF SOLE SHAREHOLDER:

- Annually elect directors
- Annually nominates CEO
- Approves articles and bylaws changes
- Approves debt incurred in excess of $5,000
- Approves transfers of assets to recipients outside of system
- Approves mergers and liquidations
- Approves creation of subsidiaries and controlled corporations
- Approves budgets

DIRECTORS APPOINTED BY: Shareholder

PURPOSES AND FUNCTIONS: May conduct a wide range of activities that are not tax-exempt by nature, including management services, occupational health, primary care centers, management consulting, physician office buildings, pharmacies, shared services and comprehensive behavioral health.

Exhibit B

HOSPITAL HOLDING COMPANY
CORPORATE SUMMARY

TYPE OF CORPORATION:	Not-for-Profit Corporation
TAX STATUS:	IRC §501(c)(3) tax-exempt Nonprivate foundation
SOLE MEMBER:	Model C: Parent Company
DUTIES OF SOLE MEMBER:	-Appoints directors -Annually nominates CEO -Approves articles and bylaws changes -Approves debt incurred in excess of $5,000 -Approves transfers of assets to recipients outside of system -Approves mergers and liquidations -Approves creation of subsidiaries and controlled corporations -Approves budgets
TRUSTEES APPOINTED/ ELECTED BY:	Member
SOLE MEMBER OF:	Hospitals and other Healthcare organizations in the system
DUTIES AS SUCH SOLE MEMBER:	-Appoints directors -Annually nominates CEO -Approves articles and bylaws changes -Approves debt incurred in excess of $5,000 -Approves transfers of assets to recipients outside of system -Approves mergers and liquidations -Approves creation of subsidiaries and controlled corporations -Approves budgets
PURPOSES AND FUNCTIONS:	Has broad charitable purposes, conducts selected exempt functions, exercises control over and coordinates policy-making and planning for controlled tax-exempt provider corporations

Exhibit B

HUMAN SERVICES HOLDING COMPANY
CORPORATE SUMMARY

TYPE OF CORPORATION:	Not-for-Profit Corporation
TAX STATUS:	IRC §501(c)(3) tax-exempt Nonprivate foundation
MEMBER:	Model B & C: Parent
DUTIES OF MEMBER:	-Appoints Directors -Annually Nominates CEO -Approves articles and bylaws changes -Approves debt incurred in excess of $5,000 -Approves transfers of assets to recipients outside of system -Approves mergers and liquidations -Approves creation of subsidiaries and controlled corporations -Approves budgets
DIRECTORS APPOINTED BY:	Member
SOLE MEMBER OF:	Model B & C: Foundation and Real Estate Holding Company
SOLE SHAREHOLDER OF:	Business Corporation
DUTIES AS SUCH SOLE MEMBER AND SOLE SHAREHOLDER:	-Appoints Directors -Annually Nominates CEO -Approves articles and bylaws changes -Approves debt incurred in excess of $5,000 -Approves transfers of assets to recipients outside of system -Approves mergers and liquidations -Approves creation of subsidiaries and controlled corporations -Approves budgets
PURPOSES AND FUNCTIONS:	Has broad charitable purposes, conducts selected exempt functions, exercises control over and coordinates policy-making and planning for tax-exempt controlled corporations

EXHIBIT C

States in which hospitals may be affected by nonprivate foundation rules:

Arkansas
California
Colorado
Connecticut
Florida
Georgia
Hawaii
Illinois
Indiana
Iowa
Kentucky
Maryland
Massachusetts
Michigan
Minnesota
Missouri
New Jersey
New York
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
Tennessee
Vermont
Virginia
Washington
Wisconsin

Chairman RANGEL. It is difficult to identify what type of hospitals you are talking about, since you are a law firm instead of a hospital association.

Would you submit the names of those hospitals? You only list all of the States, but how can Members know exactly who you are talking about?

Mr. ROACH. We would be happy to do that, with the permission of our clients.

I can say generally our clients are tax-exempt community and religious hospitals ranging in size from 16 beds to 2,000 beds.

Chairman RANGEL. Could you tell me which hospitals are in New York?

Mr. ROACH. Yes, sir, I could and would be happy to submit that list to you.

[The information follows:]

ADDITION TO STATEMENT OF WILLIAM H. ROACH, JR.

HOSPITAL CLIENTS OF GARDNER, CARTON & DOUGLAS WHO HAVE AUTHORIZED DISCLOSURE OF THEIR NAMES

Florida.—Adventist Health System/Sunbelt, Inc., Orlando, Florida. Baptist Hospital, Pensacola, Florida. Morton F. Plant Hospital, Clearwater, Florida. The Venice Hospital, Venice, Florida.

Illinois.—Alexian Brothers of America, Inc., Elk Grove Village, Illinois. ANCHOR Organization for Health Maintenance, Chicago, Illinois. Augustana Hospital and Health Care Center, Chicago, Illinois. Blessing Hospital, Quincy, Illinois. Central DuPage Hospital, Winfield, Illinois. Community Hospital of Ottawa, Ottawa, Illinois. Decatur Memorial Hospital, Decatur, Illinois. Franciscan Sponsorship Commission, Wheaton, Illinois. Freeport Memorial Hospital, Freeport, Illinois. Grant Hospital of Chicago, Chicago, Illinois. Harvard Community Memorial Hospital, Harvard, Illinois. Lake Forest Hospital, Lake Forest, Illinois. Lutheran General Hospital, Park Ridge, Illinois. Mercy Hospital, Urbana, Illinois. Mercy Hospital and Medical Center, Chicago, Illinois. Methodist Medical Center of Illinois, Peoria, Illinois. Morris Community Hospital, Morris, Illinois. Mt. Sinai Hospital Medical Center, Chicago, Illinois. Northwestern Memorial Hospital, Chicago, Illinois. Norwegian-American Hospital, Inc., Chicago, Illinois. Old Orchard Hospital, Skokie, Illinois. Parkside Medical Services Corporation, Park Ridge, Illinois. Pekin Memorial Hospital, Pekin, Illinois. Perry Memorial Hospital, Princeton, Illinois. Rehabilitation Institute of Chicago, Chicago, Illinois. Riverside Medical Center, Kankakee, Illinois. Rockford Memorial Hospital, Rockford, Illinois. Saint Elizabeth Medical Center, Granite City, Illinois. The St. George Corporation, Palos Heights, Illinois. St. Mary's Hospital Kankakee, Illinois. Servants of the Holy Heart of Mary, Kankakee, Illinois.

Indiana.—Community Hospital, of Indianapolis, Indiana. St. Vincent Hospital and Health Care Center, Indianapolis, Indianapolis, Indiana.

Iowa.—St. Francis Hospital, Waterloo, Iowa. St. Luke's Methodist Hospital, Cedar Rapids, Iowa.

Massachusetts.—Cape Cod Hospital, Hyannis, Massachusetts. Mercy Hospital, Springfield, Massachusetts. Norwood Hospital, Norwood, Massachusetts. Union Hospital, Lynn, Massachusetts.

Minnesota.—Health Central, Inc., Minneapolis, Minnesota. Mercy Medical Center, Minneapolis, Minnesota.

New Jersey.—Middlesex General Hospital, New Brunswick, New Jersey. Saint Barnabas Medical Center, Livingston, New Jersey.

North Dakota.—Bismarck Hospital Association, Bismarck, North Dakota. Dakota Hospital, Fargo, North Dakota. The United Hospital, Grand Forks, North Dakota.

Ohio.—Miami Valley Hospital, Dayton, Ohio. University Hospitals of Cleveland, Cleveland, Ohio.

Pennsylvania.—Shadyside Hospital, Pittsburgh, Pennsylvania.

Tennessee.—Baptist Memorial Hospital, Memphis, Tennessee. Fort Sanders Regional Medical Center, Knoxville, Tennessee. Saint Thomas Hospital, Nashville, Tennessee.

Washington, D.C.—National Rehabilitation Hospital, Inc., Washington, D.C.

Wisconsin.—St. Joseph's Hospital, Milwaukee, Wisconsin. St. Mary's Medical Center, Racine, Wisconsin. St. Michael Hospital, Milwaukee, Wisconsin.

Chairman **Rangel**. Could you help us now to find out who you are and who you represent?

Mr. **Roach**. We represent Northwestern Memorial Hospital in Chicago. We represent Lutheran General Hospital in Park Ridge, Ill.

We represent Shadyside Hospital in Pittsburgh, a variety of acute care, general and teaching hospitals throughout the country.

Chairman **Rangel**. I assume you are recommending a lot of these reorganizations, corporate reorganizations that you mention?

Mr. **Roach**. Yes, sir.

Chairman **Rangel**. For what purpose?

Mr. **Roach**. The primary purpose is to allow the hospitals to continue to provide the services their communities have demanded over the decades and still maintain their financial viability under the current reimbursement and payment structures and those recommended by Congress, such as the upcoming——

Chairman **Rangel**. Medicaid and medicare reimbursements, organizations do better with or without it?

Mr. **Roach**. The hospitals that we represent have shown us that they will be able to maintain their financial viability better if they, as the current legislation recommends, concentrate their activities on inpatient care and move those activities that were, if you will, convenience activities for their communities, to other organizations, where they can be self-supporting and not activities that would——

Chairman **Rangel**. Well, what would you tell a client as to what financial benefits the institution would receive through a reorganization?

Mr. **Roach**. There are a lot of examples we might give you. Some organizations, for example, operate a day care center for the community and their employees. This is something that could be transferred from the hospital to a tax-exempt community service organization in a diversified system, and be expanded to a larger portion of the community, or to employees of other tax-exempt organizations, for example, in a large medical center and be self-supporting, away from the hospital, and not be a drain on the hospital's resources or attention.

Chairman **Rangel**. Thank you.

Mr. **Roach**. That is one example. The examples obviously vary with the institution.

Chairman **Rangel**. It would be helpful if you could get permission from your clients to reveal the names so members would know how we can best assist private charitable organizations.

It is a little difficult when you just label them as hospitals. We do want to help and perhaps we can, if we had the right information. Staff will be in touch with you.

Mr. **Roach**. We would be pleased to help.

Chairman **Rangel**. Mr. Frazer, what is it that your foundation does? What are you involved in besides selling books?

Mr. **Frazer**. The purpose of the book is to promote world peace and brotherhood and all contained in this particular volume. There are affiliate organizations for studying the book, and allowing people to understand what the contents of the book are, but basically that is what the organization does. Its purpose is world brotherhood and the book is the method by which they do it.

Chairman RANGEL. They do not do anything besides publish and sell the book?

Mr. FRAZER. They have the URANTIA Brotherhood, which conducts study groups, and so on, like that.

Chairman RANGEL. Mr. Duncan?

Mr. DUNCAN. I would like to thank the panel and associate myself with your questions, and I have no further questions.

Chairman RANGEL. Let me thank you.

We want to help out the hospitals. We need more information.

Next: Sheldon S. Cohen; Norman A. Sugarman; the John D. and Catherine T. MacArthur Foundation, Dr. John E. Corbally, president; and W. K. Kellogg Foundation, Dr. Russell G. Mawby, president.

Mr. DUNCAN. At this point in the record, may I ask unanimous consent to introduce a letter by Mr. Ben W. Latimer, of Charlotte, N.C., which has been submitted by Mr. Martin for the record.

Chairman RANGEL. Without objection.

[The letter follows:]

CHHS,
Charlotte, N.C., June 17, 1983.

Hon. JAMES G. MARTIN,
House of Representatives,
Washington, D.C.

DEAR JIM: This letter is in reference to the June 27–28 hearings of the Oversight Subcommittee of the U.S. House Committee on Ways and Means, to review the 1969 Tax Act's effects on private foundations.

In our earlier conversations, we've had the opportunity to share with you how the W. K. Kellogg Foundation and other foundations have provided CHHS substantial grants for development of shared services and other programs that now benefit hundreds of hospitals in the Carolinas and elsewhere.

We are particularly concerned about the adverse effect on the Kellogg Foundation posed by the excess business holdings provision of the 1969 Tax Act. We will greatly appreciate your support of the Kellogg Foundation, and relief for the Foundation from the excess business holdings provision, during the hearings.

This provision (Section 4943) limits the proportion of stock of any particular business enterprise which a private foundation like Kellogg may own. I am enclosing a background paper, developed by Kellogg, on this issue, and hope you will consider the effects on organizations like ours if the capability of foundations is restricted by forced divestiture of some holdings.

Our concern is with the future grantmaking capability of foundations like Kellogg and with the best interests of philanthrophy. The Kellogg Foundation has an outstanding record in terms of both asset growth and payout for charitable purposes. A forced divestiture could drastically lower funds which the Kellogg Foundation has available to support CHHS and other nonprofit organizations.

The W. K. Kellogg Foundation has been crucial to our organization's growth and development, and it is actively assisting us and healthcare today. Between 1973 and 1978, this Foundation provided us grants totaling $348,000 which, with matching assistance from a sister foundation, enabled us to begin two services critically needed by community hospitals: clinical engineering and biomedical instrumentation services, and contract management for smaller community hospitals needing a system linkage to survive and continue serving their patient base. Today, we are field-testing in the Carolinas a major planning, budgeting, and control system for hospitals that is being developed nationally by Hospital Research and Education Trust with a major grant from the Kellogg Foundation; it will help hospitals cope with new healthcare financing methods of TEFRA.

Neither the hospital sector alone, nor government, can fund the kind of creative trial of new approaches that the programs above represent, and the Kellogg Foundation through its grants have contributed significantly to advancements in our field that likely would not have resulted otherwise.

Jim, I hope you can support our position, and that you'll be directly in touch with us if we can provide more information.

In regard to another matter: our interest in the legislation relating to shared services (that we discussed with you during a Charlotte visit) remains high, and we look forward to hearing if you have further information concerning it.

Cordially,

BEN W. LATIMER, *President.*

Enclosure.

A REVIEW OF EXCESS BUSINESS HOLDINGS PROVISIONS (IRS SECTION 4943) AND THEIR IMPACT ON PRIVATE FOUNDATIONS

The excess business holdings provisions (Section 4943) of the 1969 Tax Act restrict the percentage amount of a single corporate stock which may be owned by a private foundation and its "disqualified persons." [1]

These provisions should be repealed by Congress for a number of reasons:

(1) Fourteen years of experience have shown that the excess business holdings provisions are now unnecessary because of the provisions of tax and trust law.

(2) The provisions have contributed to the dramatic decline in the creation of new foundations since 1969.

(3) The excess business holdings provisions represent an unreasonable and unwarranted restriction on the investment decisions of foundation trustees and managers.

(4) The provisions threaten the future grantmaking capacity and the value of assets of a number of foundations nationwide, including the W. K. Kellogg Foundation.

I. EXCESS BUSINESS HOLDINGS PROBLEMS BEFORE TRA69

In 1965, the U.S. Department of Treasury reported that a number of foundations (109 of 1,300 private foundations surveyed) owned 20 percent or more of a business enterprise. The Treasury Report provided examples of how, in a limited number of cases, such ownership had resulted in related abuse by foundations. It expressed anxiety over the potential for future abuses of three general types. They were: competitive advantage, distribution of earnings, and management of business enterprise.

Competitive advantage

Treasury noted that a few business owners had manipulated the purpose of a foundation by using tax-free dollars to further business activities in ways considered unfair to competitors. Corporate taxes were avoided by paying pre-tax profits to a foundation (tax-exempt); using pre-tax donations to a foundation to help capitalize or expand a business; or by using tax-free foundation investment income to supply capital to a business. This represented unfair competitive advantage, since businesses not owned by foundations rely on after-tax dollars for capital.

Distribution of earnings

There were examples of foundation-owned enterprises delaying distribution of profits to the parent organizations. This allowed profits to be reinvested in business modernization without tax liability; and in turn delayed benefits to charity through foundation grantmaking.

Management of business enterprise

The Treasury Report said there were instances when a foundation became involved in business activities to the point that the charitable pursuits of the foundation were "submerged" by pressures and demands of the commercial enterprise.

II. DESCRIPTION OF TRA69: EXCESS BUSINESS HOLDINGS PROVISIONS

Under Section 4943 of the 1969 Tax Act, the federal government adopted new restrictions on foundations which prohibited "excess" business holdings; with the intent of forestalling the types of foundation/business interactions of concern to the Treasury Department. Excess holdings that existed before 1969 were treated differently from those acquired afterward.

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[1] "Disqualified persons" are essentially the founder, foundation managers, and their lineal descendants.

Holdings acquired after 1969

For holdings acquired after 1969, the foundations—in conjunction with all "disqualified" persons (essentially the founder, foundation managers and their lineal descendants)—may not in most instances hold more than 20 percent of the voting stock in the business enterprise. Stock owned above the permitted limits must be sold within five years.

Holdings acquired before 1969

The rules for pre-1969 holdings are relatively complex, with each foundation provided two time periods, or phases, for divestitute. The rules, as they apply to the Kellogg Foundation, are:

Phase 1.—In a formula based on percent of stock ownership in 1969, a foundation must have reduced its percentage of ownership to 50 percent or less (including that owned by disqualified persons). Foundations were given from 10 years to 20 years to reach the 50 percent level.

Phase 2.—The length of time for Phase 2 is 15 years for all foundations regardless of their holdings. At the end of Phase 2, the foundation must have reduced it holdings to 35 percent, or less.

III. WHY THE EXCESS BUSINESS HOLDINGS PROVISIONS ARE NOT NEEDED

By enacting Section 4943 of the 1969 Tax Act, Congress limited the amount of a single stock corporate ownership which could be held by a private foundation. However, the abuse relative to foundation ownership of stock, as cited in the 1965 Treasury Report, and in the 1969 Congressional hearings, included only a few, if well publicized, examples.[2] The 1965 Treasury Department Report emphasized that "(our) investigation had indicated that most private foundations act responsibly and contribute significantly to the improvement of society." In light of the limited number of cited abuses, Section 4943 has proven to be a heavy handed response; punishment of the many for the sins of the few.

The types of abuses with which Congress was rightfully concerned were addressed forcefully in the 1969 Tax Act not only by the Section 4943 provisions relating to excess business holdings, but also by the other sections providing a penalty tax on jeopardizing investments, setting a minimum distribution requirement for foundations, and by a myriad of other foundation requirements. All of these provisions in the 1969 Tax Act, as well as the foundation oversight under general trust law, represent a strong case for now revising what John Nason,[3] author of "Trustees and the Future of Foundations," recently labeled "the unnecessary regulations on excess business holdings."

This revision can be made because:

(1) the excess business holdings provisions as currently written are no longer required to stop abuse;

(2) the excess business holdings provisions appear to be one of the major disincentives to the creation of new foundations;

(3) the provisions represent an unreasonable restriction on the investment responsibilities and rights of foundation trustees and managers; and

(4) the provisions threaten the future grantmaking capability of foundations.

1. The provisions are not required to stop abuse

The three primary areas of limited abuse reported by the Treasury Department in 1965 are today adequately safeguarded by other laws.

Competitive advantage.—examples of unfair competitive advantage have disappeared since the 1969 Act. Yet many foundations still have excess holdings. In short, provisions of the law—notably rules against self-dealing and jeopardy investments—have eliminated the abuses.

Distribution of earnings.—The problem of some foundations making small payout to charity has been eliminated by the congressionally mandated payout requirement for private foundations, five percent of market value of assets must be distributed annually.

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[2] The abuse most often cited during the 1969 hearings related to the James Irvine Foundation of San Francisco, which owned 53 percent of the Irvine Company. The Company in turn owned 88,000 acres in suburban Los Angeles. The land was allegedly valued by the company at $1 billion. However, the foundation carried its Irvine Company stock at a value of $2.

[3] Dec. 7, 1982, speech before members of the Minnesota Council on Foundations.

[4] Estimate based on survey conducted by the Council on Foundations in 1980 and independent review of foundation 990s. Scope of problem is difficult to ascertain since foundations facing divestiture requirements are reluctant to be identified. Knowledge of such forced sale of assets at a future date could depress the value of their holdings.

Management of business enterprise.—As noted earlier, problems of jeopardy investments and self dealing have been effectively eliminated by other provisions of the 1969 Tax Act. In addition, both trust law and oversight regulations of the Securities and Exchange Commission for publicly traded stock provide additional safeguards regarding fiduciary rights and responsibilities of foundation and corporate board members.

2. The provisions are a barrier to creation of new foundations

Since 1969, many potential donors with family business interest have decided not to create foundations. There have been a number of reasons, including differential treatment of gifts to public charities as opposed to foundations, and changes in the general economy. The excess business holdings provisions have also been one of the major deterrents.

The impact of these provisions is understandable in light of the history of foundations in America. According to the 1970 Peterson Commission, the creation of foundations—and particularly America's larger ones—usually has been in the form of blocks of stock controlling a business which the donor developed during his lifetime. Data compiled by the Commission indicated that over half of all gifts to large foundations were in the form of control stock. And Section 4943 of the 1969 Tax Act has been directed precisely at discouraging the contributions of this type of asset. This impact seems to be borne out in the decline in creation of new foundations nationally since the excess business holdings provisions went into effect in 1969. In the decade from 1970–79, only 258 new large foundations were established (that is, with assets greater than $1 million or grants of more than $100,000 per year). Only two of those had assets greater than $100 million. This contracts with the creation of 1,261 new large foundations from 1950–59, and 756 from 1960–69.

3. The provisions represent an unwarranted and unreasonable restriction on investment rights and responsibilities of foundation trustees and managers

Only private foundations—among the nation's multitude of philanthropic organizations—are restricted as to the type of assets which they may have in their portfolios and use to generate maximum income for charitable activities. The argument is not that all foundations should have assets concentrated in a particular form of investment. For many, a diversified portfolio represents the best return for charitable purposes. For others, however, assets retained in the form of one corporate stock have proven to be outstanding sources of income for charity. Foundation trustees and managers should thus have the same right and responsibility—as do the trustees of all other charities in the United States—of making sound investment decisions based on the best interests of charitable purposes and not based on the dictates of government. Eliminating Section 4943 of the Internal Revenue Code (excess business holdings provisions) will provide such equality of investment options to foundations.

4. The excess business holdings provisions may result in significant loss of foundation assets and grantmaking capability

The excess business holdings rules are too complex, inflexible and difficult to work with, and they have severe, totally unanticipated consequences for existing foundations and corporations. The major pre-1969 foundations with excess business holdings still have a number of years to reach permitted divestiture levels. There likely will be increased problems, particularly with business takeovers and mergers as the foundations divest. Knowledge that a foundation must divest a major block of stock within a specified period is also likely to depress the price and aid in outside merger or takeover attempts of a related business. Divestiture under these circumstances, or because of a generally depressed economy, is difficult, expensive, and may result in significant loss of foundation assets. That translates into a loss of funds for charitable purposes.

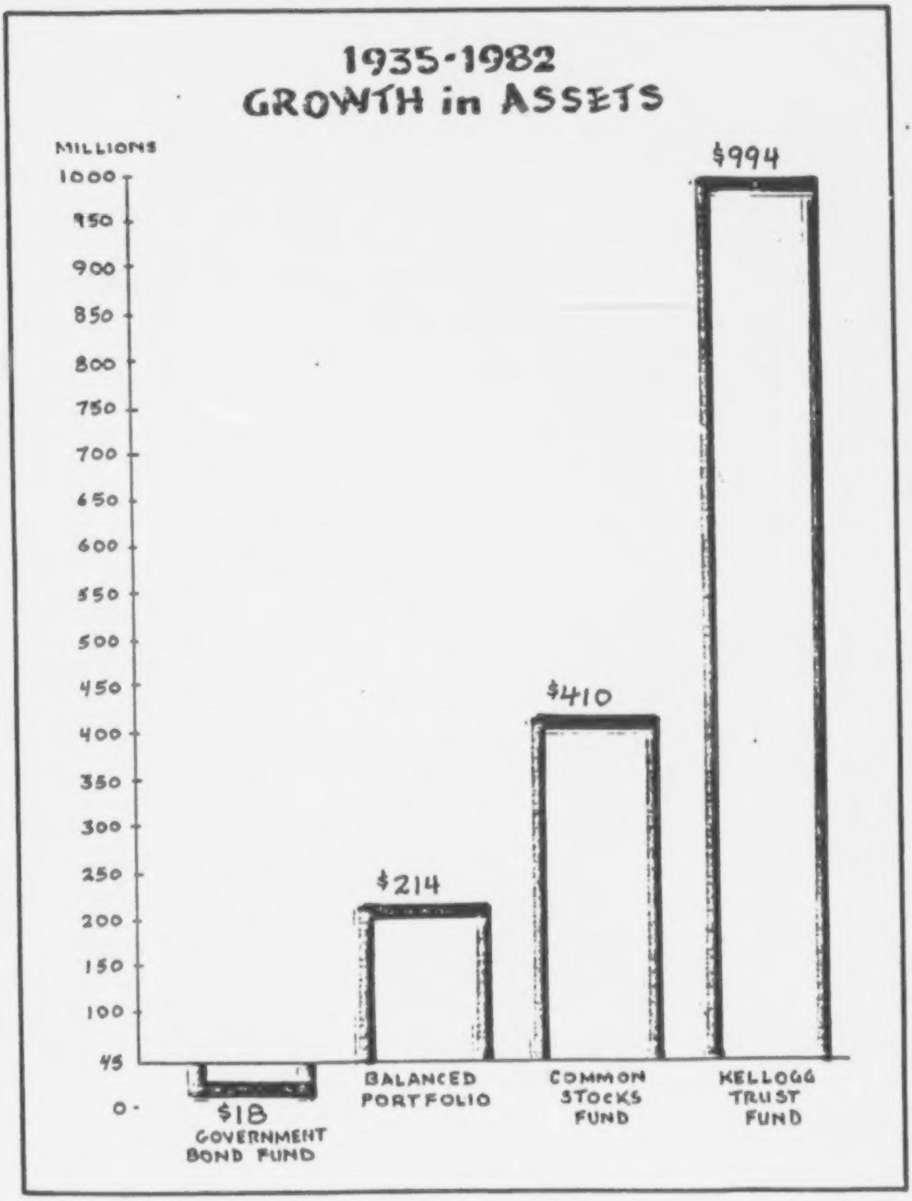
IV. THE KELLOGG FOUNDATION'S SITUATION RELATIVE TO EXCESS BUSINESS HOLDINGS

The W. K. Kellogg Foundation has "excess business holdings" as defined under the law, and outlined on page 4. The Foundation is the sole beneficiary of all income from a separate Trust (the W. K. Kellogg Foundation Trust) which currently owns approximately 47 percent of the outstanding shares of the Kellogg Company, an international pioneer and leader in the ready-to-eat breakfast cereal industry. The Kellogg Foundation is concerned since the excess business holdings provisions require the Trust to sell by 1994 a major portion of its Kellogg stock to meet the excess business holdings provisions of the existing law. The Foundation's concern is with the impact such a sale will have on the potential value of its assets, and on its continued ability to fund charitable projects and organizations.

As the two charts on following pages illustrate, the Kellogg Trust Fund (composed entirely of Kellogg Company stock) has grown dramatically in value from a base of $45 million in 1935 to a current value of $994 million. This rate of growth exceeded the same historical performance of government bonds by 2,150 percent; common stocks by 811 percent; and a balanced portfolio of stocks and bonds by 376 percent. In addition to this dramatic growth in value by Kellogg stock, the Kellogg Trust Fund paid out $569 million for charitable activities of the Kellogg Foundation; far more than what would have been available from any other type of investment for this same period.

The Kellogg Trust's 1982 distribution to charity was 136 percent more than possible from a diversified portfolio; 334 percent more than from a 50 percent stock/50 percent bond (balanced) portfolio; and 2,553 percent more than would have been possible from a fund comprised of government bonds.

The record shows that—in the case of the W. K. Kellogg Foundation—the holding of concentrated stock in the Kellogg Company has continued to be in the best interests of charity and the thousands of charitable organizations which receive financial support from the Foundation.


1935-1982
GROWTH in ASSETS
MILLIONS
1000
950
900
850
800
750
700
650
600
550
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350
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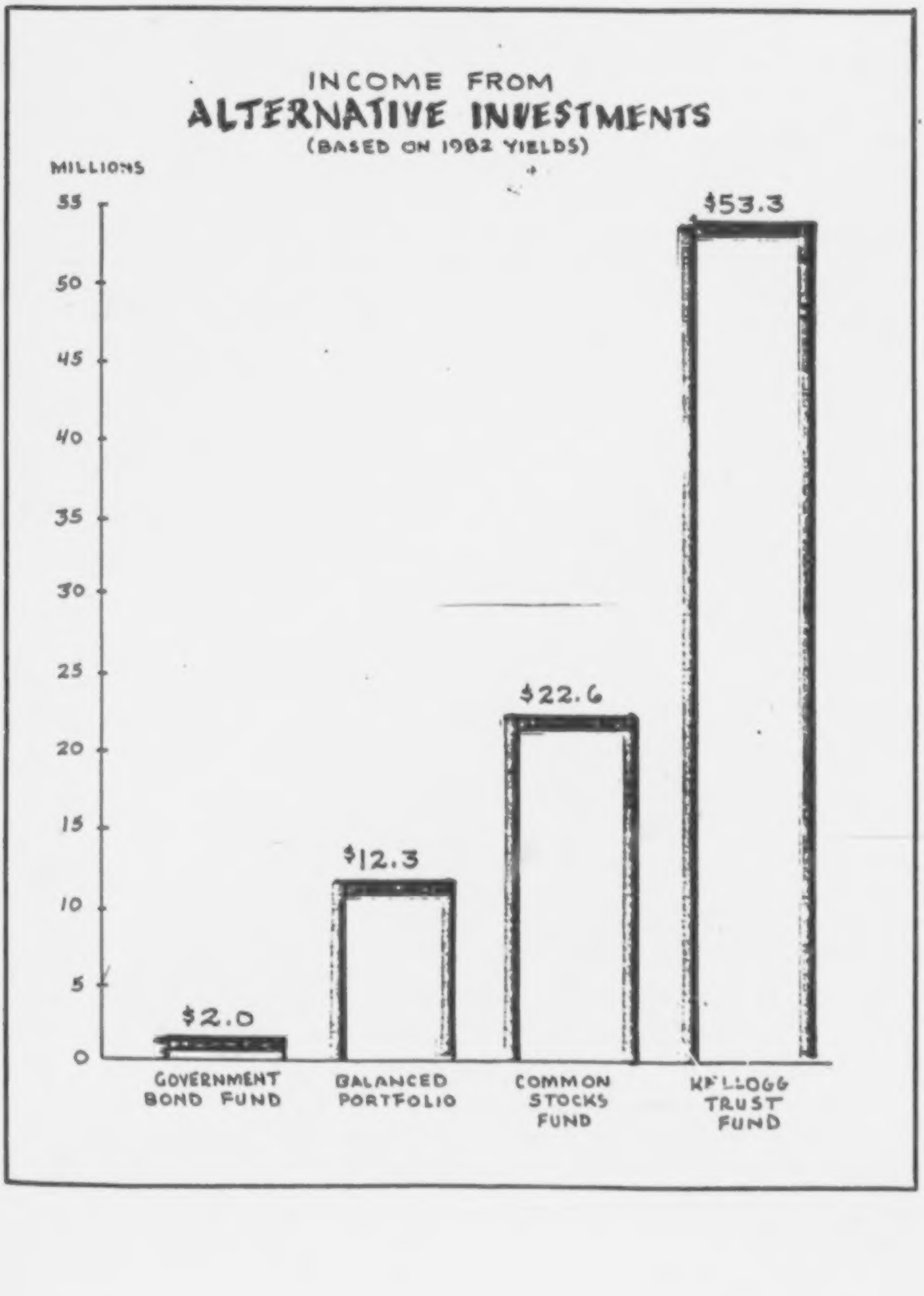
250
200
150
100
45
0
$18
GOVERNMENT BOND FUND
$214
BALANCED PORTFOLIO
$410
COMMON STOCKS FUND
$994
KELLOGG TRUST FUND


INCOME FROM
ALTERNATIVE INVESTMENTS
(BASED ON 1982 YIELDS)
MILLIONS
55
50
45
40
35
30
25
20
15
10
5
0
$2.0
$12.3
$22.6
$53.3
GOVERNMENT BOND FUND
BALANCED PORTFOLIO
COMMON STOCKS FUND
KELLOGG TRUST FUND

V. SUMMARY

It has taken our nation almost a century to develop its private foundations. This pool of capital began after the turn of the century through personal initiatives by Carnegie, Ford, Rockefeller, Kellogg, Mott, Kresge and others who contributed shares in the industries they had built. They saw foundations as the way to further charitable purposes and at the same time to provide for the continuance of their businesses or their orderly transfer to new ownership.

Private foundations offered the opportunity for entrepreneurs, during their lifetimes, to participate in trying to improve their cities, the nation, and even the world. They were motivated by a desire to help, and our government gave them the incentives they needed to try. Those factors led to the development of private foundations in America—charitable institutions which now hold and manage approximately $43 billion.

Today, the incentives are disappearing. The 1969 Tax Act—and specifically its provisions relating to excess business holdings—is partially responsible.

As the Commission on Foundations and Private Philanthropy (Peterson Commission) noted in 1970: "We objected to the way the new law (1969 Tax Act) limits foundation ownership of corporate control stock . . . A payout requirement, prohibitions on self-dealing, and greater disclosure—all required by the new law—seem to us to provide a better solution than an arbitrary limit on percentage of ownership . . . We believe this provision could easily retard the flow of large pools of capital into philanthropy.[5]

That prediction has become a reality since 1969. Therefore, the excess business holdings provisions of the 1969 Tax Act (Section 4943) can and should be eliminated by Congress because:

(1) Public interests are safeguarded by other parts of the 1969 Tax Act;

(2) The excess business holdings provisions are retarding the creation of new foundations in America;

(3) Through these provisions, private foundations alone among all charities in our nation are hampered in their investment decisions; and

(4) The excess business holdings provisions threaten the ability of the Kellogg Foundation and other foundations to maintain the outstanding level of charitable giving which has characterized their grantmaking over many decades.

The over-riding question may be one of long-term public interest and policy. Public opinion polls about foundations over the past ten years establish clearly that a great majority of the public has favorable feelings about the utility of foundations. The provisions of TRA69 which discourage, impede, and limit incentives to the growth of private foundations are out of step with the public view of the value of foundations. The excess business holdings provisions should be eliminated and the incentives restored for creating new foundations.

Chairman **RANGEL**. Mr. Wolpe.

STATEMENT OF HON. HOWARD WOLPE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. **WOLPE**. Thank you. Mr. Chairman.

Chairman **RANGEL**. Go ahead.

Mr. **WOLPE**. Mr. Chairman, it gives me great pleasure to introduce to the subcommittee Dr. Russell Mawby. Dr. Mawby, of Battle Creek, is one of my State's most distinguished citizens and is recognized as one of the leading authorities on philanthropy in the Nation.

Dr. Mawby is the chief executive officer of the Kellogg Foundation and is presently serving as chairman of the board of directors for both the Council on Foundations and the Detroit branch of the Federal Reserve Bank of Chicago.

I am very pleased that he is able to join the panel of expert witnesses in testifying today on his experience with the Foundation Tax Act.

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[5] Peterson Commission report, p. 167.

The Kellogg Foundation, established in 1930 by W. K. Kellogg, has contributed over $643 million to programs and institutions around my State and around the world. It is presently among the five largest philanthropic organizations in the country, focusing its work in the areas of agriculture, education, and health. In Michigan, the foundation has been a tremendously active force in promoting economic development and broadening opportunities for disadvantaged youth.

Dr. Mawby has been a critical player in directing the course of the Kellogg Foundation, and it is my deep honor to present him to the subcommittee today.

Thank you, Mr. Chairman, for this opportunity to join you this afternoon.

Chairman RANGEL. The Chair will suspend for 10 minutes so the members can respond to the rollcall, and when we return, Mr. Sheldon Cohen will lead off the discussion.

The Chair recesses for 10 minutes.

[Brief recess.]

Chairman RANGEL. The Oversight Subcommittee will resume its hearings on private foundations.

We appreciate the great experiences and expertise that Mr. Cohen can bring to these hearings, having served so well his country in the time that many of these regulations and laws were created.

So, welcome, Mr. Cohen. As I have said to other panels, your full statement will appear in the record and, because of time constraints, we will have to abide by the 5-minute rule.

STATEMENT OF SHELDON S. COHEN, COHEN & URETZ, WASHINGTON, D.C.

SUMMARY

I. The business of charity is charity—not operating a business. Operating a business detracts from charitable pursuits, by making foundation managers responsible for an active business and detracts from the normally exacting requirements of business by establishing a self-perpetuating group of managers divorced from shareholder scrutiny.

II. The abuses identified in the 1965 Treasury Report and dealt with in the 1969 Act will probably reoccur if the investment rules are dramatically changed. Greshams law applies in this field as in others—bad practice drives out good.

The pre-1969 law permitted the examples of business involvement identified in the legislative history—which included, among others, a foundation operating a major metropolitan newspaper, the largest radio station in the State and 16 other active businesses. A financial empire of this magnitude inevitably involves financial transactions which provides opportunities for subtle forms of self dealing. Moreover, by virtue of the nature of the particular business involved in the example, the foundation could be thrust into the heart of the political and legislative process despite the fact that there are restrictions on such activity by charitable organizations generally. I have no reason to believe that the abuses identified in 1969 are any less possible today and therefore that section 4943 is needed any less today than in 1969.

III. Repeal of section 4943 would give rise to unwarranted administrative burdens. The foundation and general charitable area are not designed to be productive of revenue and therefore administrative burdens should be kept to a minimum. Ownership or control of a business simply provides too many opportunities for controversy between foundation and the Internal Revenue Service. The Service is woefully short of personnel. The audit level on individual income tax returns is down to 1.5 percent from almost 5 percent in 1969. This is no time to increase the Internal Revenue Service's administrative burden.

IV. Policy objections to section 4943 are not well founded. It is argued that section 4943 has "dried up" charitable gifts of business interests. There are some notable "exceptions"—MacArthur, Johnson, Hewlett and Getty. Small businesses may not be given where maintenance of control is important. But it is not clear whether charity really benefitted when gifts resulted from a tax lawyer's estate planning device for maintaining control of family business.

Similarly, arguments that repeal is necessary in order to allow "community control" of local business or prevent "inordinate" takeovers of family businesses are off the mark. Foundations are to serve charitable purposes, not to provide devices for maintaining control of family businesses.

V. Technical corrections such as the redemption problem or extension of the five-year grace period are worthy of consideration.

Mr. COHEN. Thank you, Mr. Chairman.

I did serve, as you recall, during the genesis of the present rules. The 1965 Treasury study which was the basis of the 1969 Act, was prepared during the time that I was Chief Counsel and Commissioner of Internal Revenue.

I have been asked by your staff to give you a little historical background on these issues. I want to start by saying that these are my own views, I don't represent a client in this testimony.

I do have some experience in the private foundation world, both as a lawyer and I am a trustee of the Washington, D.C. Community Foundation and a number of other public charities.

The essence of my experience, to paraphrase a former President, is that the business of charity is charity and not business. Operating a business in anyway by means of any kind of control distracts from the charitable purposes by making the foundation managers too aware, too much involved in the business judgments of that controlled business.

Whether 20 percent is the right rule or some other number is the right rule, I am not here to say. Twenty percent was the rule we designed at that time. It seemed appropriate.

It still looks pretty good to me.

The abuses identified in the 1965 report, which is almost 20 years old at this time, are still out there. They are still possible.

In a situation like this, I think we are likely to read something into Justice Holmes' remark that "a page of history is worth a volume of logic."

Gresham's law will prevail, bad practice will drive out good. If we don't have reasonable restraints we will see resurgence of the bad things that gave rise to the 1969 Act.

I believe that would be bad for charity, diminish the assets that would go into charity and it would give charity a generally bad name.

So I am in favor of retaining most of the restraints, particularly those we see on the excess business holdings.

The examples in that Treasury study on page 30 and the following pages are still around. The examples in the key report are still around.

One of the organizations asking—after 15 years—for a further extension of time to disgorge its assets still owns a large metropolitan newspaper, radio station and 16 other businesses. It will be before you today or it has been already asking for more time or repeal of these rules.

I don't know of any way that a Government agency can control the multiplicity of activities that could occur in such a complex of businesses. The possibility of self-dealing within an entity that large, that diffuse with that many hundreds and thousands of transactions is virtually impossible.

A newspaper is allowed to endorse a candidate for public office. A charity may not.

How does one separate the role of the newspaper controlled by the charity? You can't. So there are a whole variety of reasons when you get into specific industry areas why charities should not own businesses. If we look at specifics, there will be some better and some worser, pardon the grammar, but it is a very difficult area to police.

One of the things that very few people take into account is the administrative burden on the Government to police this area.

The IRS doesn't have the manpower. When I left the Internal Revenue Service, we were auditing almost 5 percent of all individual tax returns; today the Revenue Service is auditing on the order of 1.5 percent of all returns. That is less than one-third of the percentage it was.

We are crying and crying and crying about the lack of discipline with the tax system. Many people are trying to avoid it. The more we burden the Revenue Service with these very subtle rules, the more difficult it is going to be for them. So I would suggest that we keep the rule that says 20 percent or whatever number this committee decides is an appropriate percentage of business ownership.

As to some of the problems with new foundations, newly created ones where they have 5 years to disgorge, there may be in particularly large enterprises that for good cause shown should be granted additional periods of time because of the complexity of the disposal of a very large business.

So there are some problems that can be dealt with on a legislative basis that can provide some safety valves. I believe on the whole the business holdings rules have worked properly and are constructive and should remain.

Chairman RANGEL. Mr. Sugarman, Congressman Stokes regrets that he cannot leave the Floor to come and introduce you to the subcommittee, but we welcome your testimony.

STATEMENT OF NORMAN A. SUGARMAN, COUNSEL, ON BEHALF OF THE FEDERAL CARTRIDGE CORP., THE TIMKEN FOUNDATION, AND THE KNIGHT FOUNDATION

Mr. SUGARMAN. Thank you, Mr. Chairman.

I am Norman Sugarman. I am an attorney in Washington, D.C., and Cleveland, Ohio. I formerly served as Assistant Commissioner of Internal Revenue in the Truman and Eisenhower administrations, and in that capacity I supervised the work of the IRS in the area of tax-exempt charitable organizations.

In my nearly 30 years of private practice since leaving the Government service, I have advised and worked with a great many charitable organizations, both public charities and private foundations.

I am equally concerned with the burden which is being placed upon the Internal Revenue Service and on the charitable community. I think it is important that we look at this area of business holdings of foundations from the viewpoint of "Is it a proper area for the IRS to attempt to supervise?"

The present law in effect puts the IRS in the business of regulating business holdings or securities of private foundations in a manner similar to that of the SEC. From the standpoint of the charitable community, the restrictions on business holdings strike to the very heart of the reason for the creation of many foundations.

You will hear from other witnesses today of the effect, not only upon creation of foundations, but also on their maintenance.

One of the fundamentals in this area, which I think needs particular recognition, is that in many cases the foundations which have business holdings have them because they were created in the first place because a family in a comparatively small town built up a business and wanted to leave these holdings for the benefit of their community.

You heard the other day from the independent sector which referred to the number of foundations in this country that many of you have never heard of, but which are doing fine work for their communities.

In most cases these are foundations which were created because some community-minded person had developed a business and was able to leave his holdings to a foundation.

I want to illustrate my position on this matter with two situations in which I am involved.

One is that of the Federal Cartridge Corp. in the town of Anoka, Minn. It is a small town, about 16,000 people, and this manufacturing company is the largest employer in that area.

The Olin Foundation owns 100 percent of the stock of this manufacturing company. Over the years since its creation, it has contributed about $100 million for the establishment of buildings for educational institutions throughout the country. This is far and away greater than the amount contributed to the foundation in the first place.

The other is the Timken Foundation of Canton, Ohio. It too owns stock, a small part of the stock, of a manufacturing company which is also the principal employer in that city. The Timken Foundation has contributed, by far, many more dollars for charitable educational purposes than the amount originally contributed by the family in establishment of the foundation.

The company provides jobs for that community which would suffer if there was a change in that corporation, and the foundation is the backbone of the cultural resources of that community.

Mr. Chairman, I would like to make two fundamental points.

First, there is a tremendous variety in the situations which you have already seen in the operation of foundations, and that applies also to those that have business holdings. The basic problem with section 4943 is it requires divestiture of business holdings without regard to the concern of local situations and without regard to the charitable ends that are served.

The second major point I would like to make is that the statute, section 4943, can be patched up by a series of band-aids but I think, as you listen to the problems presented under the statute by the witnesses today, you will see that the band-aid approach is not much of a solution.

It can correct this case now and another one later, but ultimately it will not solve the problems.

I personally believe that the proper approach is to repeal the statute and give what some of the attorneys general who appeared before you requested—more cooperation from the IRS.

The present statute does not permit that cooperation from the Service because it interprets the statute as meaning they cannot provide information to the States until they have completed an audit.

Legislation which would assist in that cooperation and permit the attorneys general to look at their local community situations and exercise judgment which is required for the local situations would be better tax administration, and would better preserve the quality of life in these communities.

Mr. Chairman, I have submitted detailed recommendations for patching up this statute in my written material. I request that they be carefully considered, and I appreciate this opportunity to outline these basic considerations.

Thank you.

Chairman RANGEL. Thank you.

[The prepared statement follows:]

STATEMENT OF NORMAN A. SUGARMAN, COUNSEL ON BEHALF OF THE FEDERAL CARTRIDGE CORP., THE TIMKEN FOUNDATION AND THE KNIGHT FOUNDATION

SUMMARY

Subject: The need to repeal or revise IRC section 4943, relating to "excess business holdings" of private foundations

A. Section 4943 should be repealed because—

(1) As a matter of policy, under current conditions section 4943 is not necessary and is inconsistent with national policy to encourage charitable contributions in the public interest.

(*a*) Forced divestiture of stock holdings has discouraged such contributions as an important form of support for charity.

(*b*) Divestiture is injurious to small businesses particularly in creating take-over targets.

(*c*) Section 4943 has adverse effects upon community resources, employment and other local benefits which have been supported by family-created foundations.

(*d*) Section 4943 is not required to curb abuses, which are already eliminated or minimized by other sections of Ch. 42 of the Code.

(*e*) Mandatory divestiture under section 4943 threatens to substantially diminish values which should be utilized for charitable purposes.

(2) Complexities and practical problems in the application of section 4943 create burdens on both charities and the IRS which outweigh theoretical benefits sought in the enactment of section 4943.

B. Alternatively, if section 4943 is to be retained, substantial revisions are necessary, including—

(1) The definition of "members of a family" who are disqualified persons should be simplified.

(2) Business holdings on May 26, 1969, which were grandfathered by the 1969 Act, should be able to be maintained or the Treasury should be authorized to grant extensions to prevent loss of values on forced divestitures.

(3) Arbitrary and adverse results from the "downward ratchet rule" should be corrected.

(4) The permitted levels of business holdings should be simplified and increased to avoid arbitrary distinctions under present law and permit reasonable retention of business holdings.

(5) The treatment of charitable split interest trusts which hold stock should be simplified and clarified.

(6) The de minimis permitted level of holdings in a business should be increased from 2 percent to 10 percent.

(7) With respect to rules applicable to an increase in business holdings of a foundation (other than by its purchase)—

(*a*) The 5-year transitional holding period should be increased to 15 years and the Treasury should be authorized to grant extensions, and

(*b*) Expansions or acquisitions by operating businesses in which a foundation owns stock should not be treated as an increase in a foundation's holdings.

STATEMENT

My name is Norman A. Sugarman. I am a partner in the law firm of Baker & Hostetler. I formerly served as Assistant Commissioner of Internal Revenue. My duties included supervising the functions of the Internal Revenue Service with respect to tax-exempt organizations. In nearly 30 years of private practice I have worked with and advised many charitable organizations, both private foundations and public charities. I am co-author of a book published by the American Law Institute-American Bar Association on the subject "Tax Exempt Charitable Organizations."

I welcome this opportunity to speak on the subject of foundations. My statement will be focused on Internal Revenue Code § 4943, as enacted in the Tax Reform Act of 1969, because, in my experience, it is the most troublesome - from both policy and practical viewpoints - of all the tax provisions affecting the role of charities.

Section 4943 puts the IRS in the business of regulating, and in some cases forcing the divestiture of, holdings of private foundations in business enterprises. In this statement I shall address policy issues and a number of practical problems arising under § 4943 and I shall make recommendations for corrective action.

I. BACKGROUND

The initial impetus for the enactment of § 4943 was the "Treasury Department Report on Private Foundations" issued in 1965. The Report concluded that the preponderant number of private foundations operated without tax abuse, but it did provide illustrations of alleged "serious faults among a minority of such organizations." Under the headings of "Foundation Involvement in Business" and "Family Use of Foundations to Control Corporate and Other Property", the Report sought to identify certain problem areas related to foundation ownership of an interest in a business enterprise. These concluded that such businesses are free from demands of shareholders for current earnings, that foundation managers' attention is diverted to business interests and/or family control, and that there are various forms of "self dealing" which arise from the relationship of the foundation with the business.

The Treasury Report recommended that a twenty percent limit should be placed on the voting interest that a private foundation may have in a business enterprise.

When hearings were held on the Treasury Report, later in 1965, comments were made on many of the different proposals contained in the Report; but with respect to the proposals relating to business holdings, the commentators were almost unanimous in their criticism of the divestiture requirements which would apply as the result of the twenty percent limit on business holdings.

When similar proposals were presented to the Congress during its consideration of the Tax Reform Act of 1969, Congressional attention was focused on two well-publicized situations, one involving the struggle between the James Irvine Foundation and Mrs. Joan Irvine Smith, a principal stockholder in the Irvine Company and the other involving what appeared to be a holding company in Texas. The impact of the divestiture requirement on many other foundations and companies did not receive the same attention. Little consideration seems to have been given to the fact that the Congress had already enacted limitations on the conduct of unrelated businesses by private foundations (which provisions were further tightened in the 1969 Act) and that in the course of development of the 1969 Act rules against "self dealing" and requiring current distributions by foundations to public charities were also enacted.

As enacted, § 4943 is very complex and the summary below can only highlight the difficulty in its application and the resulting problems which are described more fully later in this statement.

II. SUMMARY OF IRC § 4943

Private foundations and disqualified persons (including, for this purpose, certain related foundations, § 4946(a)(1)(H)) may not own together more than 20% (35% if a third person has effective control) of the voting stock of a business corporation, except as provided below for holdings as of May 26, 1969.

Holdings in excess of permitted limits which are acquired after May 26, 1969 by gift or bequest must be disposed of by the foundation within five years. Post-May 26, 1969 purchases of stock by a foundation or a disqualified person which create or increase aggregate holdings beyond permitted limits do not qualify for the five-year grace period, and may immediately result in tax penalties on the foundation. Where disqualified persons together own more than 20% (or 35%) of the voting stock of a corporation, the limitations on foundation holdings apply to nonvoting stock as well as voting stock based on value.

A general de minimis rule permits a foundation (together with related foundations) to hold not more than the greater of 2% of the voting stock and 2% of the value of all outstanding stock of a corporation. Holdings in a "functionally related business" or a business deriving 95% of its gross income from "passive sources" (both defined terms) do not constitute excess business holdings.

Similar rules apply to interests held by trusts, partnerships and other unincorporated organizations.

Holdings in proprietorships are entirely prohibited. This has the practical effect of prohibiting the conduct of an "unrelated trade or business", which public charities are permitted to do, subject to the payment of an unrelated business income tax.

Where a foundation does not reduce its business holdings to the maximum permissible limits within the required period of time, an annual initial tax is imposed on it equal to 5% of the value of the excess holdings. If the holdings are not reduced appropriately within a defined correction period, an additional tax of 200% of such value is imposed.

A "Grandfather Clause" provides special rules where the business holdings of a foundation (or a foundation and disqualified persons) exceeded the 20% (or 35%) limit on

May 26, 1969. These special rules also apply to holdings acquired under trusts irrevocable on, or certain wills executed by, May 26, 1969, even though the actual ransfer to the foundation occurs later.

In general, grandfathered holdings are permitted to be retained, but are subject to reduction under certain circumstances as described below.

If, on May 26, 1969, the combined holdings of disqualified persons and the foundation exceed 50%, the holding are to be reduced over several phases. The first phase reduction periods are: 20 years where a foundation held more than 95% of the voting stock of the corporation; 15 years where the combined foundation and disqualified persons' holdings exceeded 75%; and 10 years where the combined holdings exceeded 50%. At the end of the first phase, the combined holdings cannot exceed (i) 50% of the voting stock of the corporation or, if less, (ii) 50% of the value of all outstanding shares.

After the expiration of the first phase, a second phase set of divestiture requirements become operational. If disqualified persons never own more than 2% of the corporate voting stock after the close of the first phase, the voting stock held by the foundation must be reduced to not more than 35% within an additional 15-year period. If disqualified persons do own more than 2% at any time after the close of the first phase, the stock held by the foundation must be reduced to 25%. Where May 26, 1969 aggregate holdings do not exceed 50% but exceed the 20% or 35% limits, a further decrease is generally not required if foundation holdings never exceed 25%, but may be required if there is an increase in the foundation or disqualified person level of holdings.

Grandfathered holdings are subject to reduction by operation of the "downward ratchet" rule. The rule, in effect, provides that if there is any increase in the holdings of disqualified persons, the holdings of the Foundation must be decreased accordingly and can never go up again to the former grandfathered or otherwise permitted level over 20% (or 35%), even if the holdings of disqualified persons are thereafter reduced.

III. POLICY ISSUES

In the fourteen years since the enactment of the Tax Reform Act of 1969 there has been ample time to observe the results of that Act and the time has now come to reexamine the policy and effect of certain of its provisions, particularly § 4943. In this Part of this statement, consideration will be given to the policy issues existing under the changed conditions of today; and in the next Part consideration will be given to practical problems arising from the application of the statute and corrective action that should be taken.

The following points or issues require examination to determine whether § 4943 currently represents sound policy:

A. Required Divestiture has Dried up an Important Source of Assets for Charitable Purposes.

It is generally recognized that since the 1969 Act the rate at which new foundations have been created has decreased substantially. One of the principal reasons for this decrease is that the transfer of family business holdings to a foundation (whether during life or at death) would necessitate the divestiture of such holdings (or of their control) regardless of how beneficial the holding of such assets would be to charity and the community served.

It is fundamental that no one is required to make charitable gifts; they are voluntary. When the advantages of making a charitable gift or bequest in the form of property, such as stock in a family business, are lessened, and, in fact, such a gift is made disadvantageous by reason of a government directive forcing divestiture within a fixed time, the property is not likely to be given to charity at all but rather retained in private hands. Various studies have been conducted which establish that the tax laws can create an incentive to encourage charitable gifts or can have the opposite result when the making of such gifts is rendered more difficult under the tax laws.

In 1969, Congress placed limitations on the income tax deduction for gifts of appreciated property (such as stock in a family business) to a private foundation; but § 4943 goes even further as a form of regulation by requiring the divestiture of such stock into the hands of strangers. Such divestiture penalizes gifts to the foundation not only by requiring a sale to outsiders but also because the required divestiture is likely to result in a loss in value, as in the case of any other forced sale. At a time when the country generally recognizes greater private resources are needed to be used to meet public needs, the penalizing nature of § 4943 stands out in stark contrast and as inconsistent with public policy in a pluralistic society.

B. Effect Upon Small Businesses

By its policy of forcing divestitive, § 4943 confronts the owners of businesses with the fact that maintenance of an interest in the business is not encouraged and that contribution of such interest to charity, in the form of a family or other private foundation, is discouraged. The result is that the alternative which is encouraged is a sell-out to a larger business, generally in the form of a tax free exchange of stock.

In fact, § 4943 goes further, for if stock is contributed to a family foundation, the tax laws themselves become a vehicle to force a change in control of the business. Since there is a limit on the holdings of both "disqualified persons" and the foundation, an acquisition of stock by a dissident disqualified person can force the foundation to sell the stock, in order to avoid a penalty tax under § 4943 -- which penalty can be several times the value of the stock. Further such a sale can only be made to persons who are not family members.

Thus the owners of a business who put stock in a foundation may find that they have created the very vehicle which makes the business a takeover target. In this respect, the policy of § 4943 is in sharp contrast to the efforts of the Congress in other provisions under the tax law (most notably IRC § 6166) to ease the tax burden on family businesses so that divestiture is not required due to a tax provision.

C. The Effect Upon Community Resources, Employment and other Local Benefits

Typically, family or private foundations have been formed by individuals to fulfill a belief that wealth derived from a community should be returned for the benefit of that community. Whether this concept is entirely inspired by benevolence or is "good business", the result is the same. The foundation, which is created to hold stock in a local business and receive dividends which are distributed in support of local charities, creates in the community not only a very substantial stake in the foundation but also in the business.

In many cases, the effect of § 4943 is to threaten that community system because forced divestiture of stock is likely to place the control of a business in the hands of interests that have no ties to the community and which view the business solely from the standpoint of the bottom line. Cases have been presented to the Congress where local businesses, whether in the form of a hotel, a newspaper, or a manufacturer which is a substantial employer in the community, are faced with a threat that control will pass out of local hands and into those who do not have the same or traditional interest in the community. Certainly such results go far beyond sound tax policy or any reasonable intention of the Congress in 1969.

D. Other Rules, Already in Effect, Serve to Limit Abuses

A great deal has happened since 1969 in the regulation of the charitable field. The 1969 Act itself, by imposing penalty taxes on "self-dealing," by requiring annual distributions by private foundations for charitable purposes and by other limitations on investments and programs of private foundations have created a degree of responsibility in this field which substantially eliminates the abuses which were thought to exist in some cases in 1969. In fact, the abuses which concerned Congress have been corrected by other provisions, leaving § 4943 to serve only as an additional regulator of business operations rather than in furtherance of any sound tax policy.

Additionally, many states have strengthened their laws regarding charities and have provided additional means for their state officials to regulate foundations.

There may be other problems in the charitable field, such as those arising in connection with charitable solicitations and similar activities, but these have nothing to do with holdings of family or other private foundations and provide no basis for requiring divestiture of investments.

It should always be remembered, there are state laws, and fiduciary standards enforceable under these state laws, with respect to the responsibilities of foundation managers to use prudence in their acquisition and maintenance of investments. Moreover, the courts have been properly used over the years to enforce such standards. The issue is whether it is necessary to have the tax laws impose arbitrary limitations on investment holdings, not based on their quality but on lineage. This issue needs to be considered especially in light of the facts that divestiture may actually be injurious to the support of charity, by serving as a disincentive to creating charitable funds and by serving as a depressant on values realized for charitable purposes. Thus, the policy exemplified by § 4943 is in sharp contrast to national policy which in other respects seeks to promote private sector support for charity.

The fact that some foundations have divested themselves of certain business holdings since 1969 is not a sufficient answer. The question remains: what is the right policy now? The Congress has the responsibility to reexamine policies and to change them as needed, as it does every year in the tax and other fields.

E. Is Mandatory Divestiture Desirable?

In 1969 the Congress was asked to enact arbitrary divestiture rules so they could be applied by the administrators of the law (the IRS) without the exercise of judgment. Is this a sound policy today?

While there is much to be said for predictable administration, this does not require that convenience of the Internal Revenue Service override sound policy. It may be convenient and administratively simpler for the IRS to impose penalties based on mathematical formulas; but where sensitive matters -- such as volunteerism, community interests, support of local charities, maintenance of small business and of jobs -- are involved, then policy not mathematics should be controlling and methods appropriate to implementation of such policy should be permitted.

The tax laws reflect national policy and are designed to encourage charitable giving and the maintenance of organizations for charitable purposes. Standards already exist, under both Federal and State laws with respect to the appropriateness of maintaining certain business holdings in a charitable organization. While it may be easier for the administrators if a penalty is automatically imposed when such holdings exceed a certain fixed percent, this really is irrelevant to the issues of whether the retention or divestiture of such holdings is proper under established legal standards and whether charitable and public interests are being served.

Elimination of § 4943 and permitting the determination of whether business holdings can be acquired or maintained based on whether such action is consistent with prudent standards and charitable purposes, would provide greater overall benefit than the present arbitrary standards. As previously indicated, there are already other penalties under the tax laws which provide the IRS ample tools for curbing any true abuses.

F. Summary of Basic Policy Considerations

The foregoing policy considerations require that Congress reexamine § 4943 and determine whether the price being paid for regulating business holdings of foundations is too great in light of the need for charitable support, maintenance of local businesses and the preservation of community resources in the public interest.

While the cost of the existing policy to communities and the public can be demonstrated on a case-by-case basis, the Congress should recognize that the cumulative effect is the need to permit charitable foundations to acquire or hold investments where that can be justified under prudent standards and in the public interest. The dictates of fourteen years ago should not blind the Congress to the need for a more enlightened policy which recognizes the importance of generating support for community interests from the private sector.

If § 4943 is repealed and abuses appear in the future, the Congress can then take proper corrective action. In the meantime, the creation and development of charitable foundations should be encouraged, not discouraged.

IV. PRACTICAL PROBLEMS REQUIRE CORRECTIVE ACTION

The policy considerations stated before are sufficient cause to repeal § 4943. In addition, the practical problems caused by the application of that section demonstrate its extreme complexity and imperfections. If corrective action cannot be taken, these practical problems alone should be sufficient reason for repeal.

Anyone attempting to read § 4943 would conclude that it is one of the most difficult parts of the Internal Revenue Code to comprehend and apply. This is further attested to by the fact that even now, fourteen years after the enactment of the statute, the Treasury has yet to issue regulations interpreting or applying key features of the statute. Even where regulations have been issued, there frequently is uncertainty due to the underlying difficulty in applying the statute itself.

Following are a list of problems under the statute which require corrective action:

A. Definition of Disqualified Person

The statute treats a whole series of individuals and entities as "disqualified persons", whose stock must be aggregated with that of the foundation in determining the permitted level of holdings. The definition reaches the height of impracticality in treating "members of a family" of a disqualified person, including all lineal descendants and their spouses, as also disqualified persons. As time passes the number of persons in distant generations who are "disqualified persons" grows interminably. Exhibit A describes this problem in more detail and proposes a legislative solution.

B. Continuation of Level of Grandfathered Holdings.

The required divestiture of present holdings which were grandfathered by the 1969 Act, has already been demonstrated to create hardship in many cases. The rule should be eased to permit the maintenance of present holdings where divestiture does not serve charitable or other public purposes. This matter is discussed in further detail in Exhibit B which also contains a legislative proposal.

C. Extension of Period for Divestiture of Grandfathered Holdings

If maintenance of May 25, 1969 holdings is not permitted in all such cases, consideration should be given to providing the Treasury Department with authority to grant extensions where necessary for an orderly disposition of holdings. This is discussed in further detail in Exhibit C, which also suggests an appropriate amendment to § 4943(a)(4).

D. Correction of Effect of Certain Changes in the Outstanding Stock of a Business Enterprise.

One of the most aggravating and difficult provisions in § 4943 is the so-called "downward ratchet rule." The effect of this rule is to force a reduction in the level of current holdings due to temporary circumstances, without the ability of the foundation to maintain on any rational basis its proportionate interest in a business. This rule is not only unduly complex and arbitrary in its application, but it also has the unintended result of interfering with the making of normal business decisions by a corporation.

It thus creates conflicts between a foundation and other stockholders with respect to the application of business decisions. This problem is explained in greater detail in Exhibit D which also contains a proposed legislative solution.

E. Restatement of the Level of Permitted Holdings.

If persons are to be encouraged to make charitable contributions and local control is to be maintained in local businesses, there should be an easing of the present twenty percent limitation on foundation holdings. At the present time the statute permits a limit of fifty percent in aggregate holdings in some cases, thirty-five percent in other cases, twenty-five percent in still other cases and finally twenty percent in all others. These differences are confusing and arbitrary. A uniform policy should be adopted which would permit holdings of fifty percent. This matter is discussed in more detail in Exhibit E and which also contains a legislative proposal.

F. Treatment of Certain Holdings of Charitable Split Interest Trusts

Section 4947(b) exempts charitable remainder trusts and charitable lead trusts (where the charitable interest is not more than 60%) from the application of § 4943. However, the statute has been interpreted as requiring such trusts to be aggregated with certain private foundations to determine whether the latter's business holdings are in excess of the 2% *de minimis* rule. As a result, a trust which is exempt from § 4943 can cause a foundation which is also exempt to become subject to § 4943.

A proposal to correct this result is discussed in Exhibit F.

G. De Minimis Rule.

The present *de minimis* rule is 2 percent, i.e. a private foundation which has no more than 2 percent of the stock in a corporation may maintain such holding regardless of the extent of holdings of disqualified persons. There is an exception, however, to this *de minimis* rule which requires aggregation of holdings for purposes of the 2 percent rule where there are related foundations. The figure of 2 percent is purely arbitrary and has no relationship to any other governmental policy. A relevant standard would be one applied under § 16(a) and (b) of the Securities Exchange Act of 1934. This uses a 10 percent equity interest as the dividing line; a holder of more than 10 percent is required to file monthly reports of holdings and changes therein and is to pay over to the issuing corporation any profits on purchases and sales of such securities in a period of less than 6 months. Many of the problems emanating from § 4943 will be mitigated if the de minimis rule is changed to a more reasonable figure such as 10%. A legislative proposal for this purpose is attached as Exhibit G.

H. Clarification of Treatment of Increase in Business Holdings Acquired other than by Purchase; Transitional Rule.

By a transitional rule the law permits a foundation time to dispose of an increase in its business holdings where the increase is not by reason of a purchase but as a result of other events, such as a gift, bequest or change in other holdings. The present 5-year transitional period has proven to be too short in a number of cases. Also the application of the statute is not clear where an acquisition is made by others. Corrective action is needed and is suggested in Exhibit H.

Exhibit A

to

Statement of Norman A. Sugarman

Subject: Definition of "Disqualified Person"; Members of Family

Present Law

Under the present law certain liabilities arise as a result of transactions or holdings involving a "disqualified person" with respect to a private foundation.

IRC § 4941 imposes taxes on a disqualified person who engages in acts of "self-dealing" with respect to a private foundation. Under § 4943, holdings of disqualified persons in the stock of a business enterprise are aggregated so as to determine the level of permitted holdings of the foundation in a business enterprise. The permitted holdings of a foundation are, in general, 20 percent of the stock of the business enterprise less the stock holdings in the aggregate of disqualified persons.

The term disqualified persons is also used in imposing certain limitations on public charities, generally publicly supported organizations.

In determining the persons who are "disqualified persons", the statute, § 4946, defines such persons as not only including substantial contributors to a private foundation, foundation managers (e.g., directors, officers, etc.), an owner of more than a 20 percent interest in a corporation, partnership, trust or unincorporated enterprise which itself is a substantial contributor, and a corporation, partnership, trust or estate in which a disqualified person has a 35 percent interest, but also any "member of the family" of a disqualified person. Also, for purposes of determining by attribution whether a person has a 20 percent or 35 percent interest in a corporation, partnership, trust, estate or unincorporated enterprise, holdings of members of his family are aggregated.

In defining members of a family for such purposes, IRC § 4946(d) includes an individual's spouse, ancestors, lineal descendants and spouses of lineal descendants.

Reasons for Change

The definition of members of a family, for purposes of determining disqualified persons, is unduly broad. In particular, since the definition applies, without limit, to lineal descendants and spouses of lineal descendants, the members of a family can multiply substantially over several generations and can encompass hundreds of persons scattered all over the world and with no connection with the foundation in question. Keeping track of such persons and guarding against any transactions with them places an extreme burden upon foundations and is impractical for the IRS to administer. This is particularly troublesome because the definition of disqualified persons may bring into that category, persons who are placed there only indirectly and without their knowledge.

Example: Mr. A, while married to Mrs. A, contributes to a foundation in the 1960's in an amount in excess of $5,000 which by definition under IRC § 507 (d)(2) constitutes Mr. and Mrs. A each as substantial contributors to the foundation as of December 31, 1969. Subsequently Mr. A dies and Mrs. A marries Mr. B, a widower. Mr. B becomes a disqualified person as a result of the marriage to the former Mrs. A, the lineal descendants (and their spouses) of Mr. and Mrs. A, the lineal descendants (and their spouses) from the marriage of Mrs. A and Mr. B and the lineal descendants (and their spouses) of Mr. B from his former marriage are all disqualified persons with respect to the foundation to which Mr. A contributed, whether such lineal descendants and their spouses ever have anything to do with the foundation.

The status of a person as a "disqualified person" presents particularly serious problems under § 4943. The purchase of stock by a disqualified person can cause the combined holdings of disqualified persons and the foundation to exceed the permitted level of holdings and require the foundation to dispose of shares in order to avoid a tax. Thus an incentive is presented for those who would seek to take over control of a business enterprise, in which a foundation has stock, to assist persons who are "disqualified persons" to purchase stock and thereby force divestiture by the foundation, which may not be in the best interests of the foundation or the community it serves. It was not intended that the definition of disqualified persons should create opportunities to use the tax laws for manipulation of control of business enterprises.

Proposal for Change and Explanation

It is proposed that IRC § 4946 (d) be amended to read as follows:

"(d) Members of Family - for purposes of Subsection (a)(1) the family of an individual shall include only his spouse, ancestors, lineal descendants who are employed by the organization with respect to which the determination of a disqualified person is made or is a director, officer or highly compensated employee of a corporation or unincorporated enterprise, a partner in a partnership, or a fiduciary or present beneficiary of a trust or estate described in subsection (a)(1)(C), (E), (F) or (G), and spouses of such lineal descendants. (Underscoring indicates new matters.)"

The foregoing definition would draw a practical line as to the lineal descendants (and their spouses) to be treated as disqualified persons. The definition would include only lineal descendants who are so involved in the foundation or in the business as to be known to the foundation and its managers. In such cases appropriate steps can be taken to avoid events or transactions which would give rise to penalty taxes under the statute. Where lineal descendants are not so involved, there is a reasonable presumption that the lineal descendant, in any dealing or relationship with the foundation, is not in any substantially different position than a member of the public. An abusive use of such lineal descendants to carry on transactions with the foundation or on behalf of other members of a family who are disqualified persons can be limited by the application of § 4941 which imposes taxes on direct or indirect acts of self-dealing between a disqualified person and a foundation.

There is precedent for this limited definition of members of the family. In § 1239 of the Code, which treats a sale of depreciable property between members of a family or between a controlled corporation and members of a family, and causes the gain on the sale to be treated as ordinary income (rather than capital gain), the definition of members of the family of an individual originally included such individual's spouse and children. The definition has been narrowed so that the members of the family now include only the individual and his spouse.

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Exhibit B
to
Statement of Norman A. Sugarman

Subject: IRC § 4943 - Continuation of Level of Grandfathered Holdings

Present Law:

When § 4943 was enacted as part of the Tax Reform Act of 1969, it was recognized that requiring divestiture of business holdings previously acquired by a private foundation would result not only in a hardship but also in loss of value where substantial holdings are made subject to a forced sale. The law therefore "grandfathered" holdings of private foundations as of May 26, 1969. Section 4943(c)(5) applies such rules to business holdings acquired after May 26, 1969, under trusts that were irrevocable or wills that were executed on or before that date.

The present law does not exempt grandfathered holdings from § 4943. Instead, it provides transitional periods during which, in some cases, the level of holdings must be reduced and, in other cases, the level of holdings may be retained. Considerable dispute has arisen over the application of the rules to these transitional periods and the underlying policy.

Reasons for Change:

A substantial part of § 4943 is devoted to complex rules involving the application of the statute during the transitional periods. These rules do not apply uniform concepts and many complaints exist with respect to their application. For example, if during the second phase (generally beginning 10 years or more from May 26, 1969) disqualified persons with respect to the foundation held more than two percent of the stock of a corporation, the permitted level of holdings of the foundation and disqualified persons is 50 percent, of which not more than 25 percent shall be voting stock held by the private foundation. On the other hand, if during the second phase disqualified persons did not have in excess of two percent of the voting stock of the business enterprise, the limit is 35% (all of which may be held by the foundation) or if after the second phase disqualified persons do have more than such two percent, the aggregate permitted level of holdings of disqualified persons and the private foundation is 35 percent, of which the foundation cannot have more than 25 percent.

Application of the rules in the transitional period is also rendered difficult by the "downward ratchet rule". This is the rule which has the effect of requiring foundation holdings to decline if there is an increase in the holdings of disqualified persons but does not permit the foundation holdings to go back to the former level if there is a decrease in the holdings of disqualified persons. This creates complexity in record keeping and more particularly creates unusual powers in disqualified persons to cause a divestiture of holdings of the private foundation. Therefore, it lends itself to manipulation of control of business enterprises by persons who would seek through disqualified persons to force a change in shareholdings.

In addition, the statute has become difficult to apply in connection with many normal business situations which give rise to the question of whether a grandfathered foundation can maintain its level of investment in a business. Such problems arise where a corporation issues additional shares such as in a public offering or in an acquisition of a corporation or buys some of its own stock (such as on the market) to fund an employee stock plan. In the latter case, the level of holdings of the foundation would be required to be reduced even though the corporation subsequently issues shares to employees thereby increasing the total of outstanding stock to its former level.

Many complaints have been called to the attention of the Congress involving foundations which have great difficulty in disposing of business holdings, whether by reason of governmental regulation, market conditions or other situations which either make the disposition almost impossible or possible only at a sacrifice in value. In other cases, the concern has been expressed that community interests or local control of business enterprises will be destroyed if divestiture is required and the business is taken over by interests without the same community involvement, as has existed in the past.

While exemptions could be provided in the law on a case by case basis, consideration has been given to adopting a rule of general application which will permit grandfathered holdings to continue to be maintained at a present level. This change is justified because prior to the 1969 legislation, mandatory divestiture was not anticipated by foundations and their donors and because subsequent developments demonstrate that such required divestitures create hardship and loss of value for charities.

Proposal for Change and Explanation:

It is proposed that IRC § 4943 be amended by adding after subsection (c)(6) the following new paragraph:

> "(7) Permitted holdings in the case of certain grandfathered foundations. -- In the case of a private foundation to which paragraph (4) of this subsection applies by reason of holdings in a business enterprise on May 26, 1969, permitted holdings shall be not less than the percentage or percentages of such foundation in a business enterprise on January 1, 1983. In the case of a private foundation to which paragraph (5) of this subsection applies, permitted holdings shall include the percentage or percentages represented by any interest in a business enterprise which such private foundation acquires after January 1, 1983, under the terms of a trust or under the terms of a will described in said paragraph (5). Permitted holdings described in this paragraph (7) shall not be reduced by reason of the operation of any of the provisions of paragraph (4) of this subsection."

The above amendment would permit private foundations which under the 1969 Act were permitted to maintain their percentage interest in a business enterprise, based upon holdings on May 26, 1969 or holdings acquired under a pre-existing will or trust, to continue to maintain the level of such holdings indefinitely rather than being forced to divest such holdings based on later events. If, for example, the foundation owns 100% of the stock of a business enterprise, such foundation will be able to continue to maintain that level of holdings. In the case of a foundation which on May 26, 1969, and on January 1, 1983 held 10% of the stock of a corporation, and disqualified persons held 15% of the stock on May 26, 1969, the foundation will be able to maintain its level of a 10% interest in the corporation regardless of whether the disqualified persons increase or decrease their percentage interest in the business corporation.

The amendment would have no effect upon the divestiture requirements applicable to new foundations or foundations newly acquiring stock (other than under § 4943 (c)(5)) since the general rule of § 4943 will continue to apply in such cases.

EXHIBIT C

SUBJECT: IRC § 4943 - Extension of Period for Divestiture of Grandfathered Holdings.

Present Law

The general rule under § 4943, as enacted in 1969, was that future holdings of private foundations and that of their disqualified persons would be limited to not more than a 20% interest in a business enterprise. The permissible level was made 35% if control of the business enterprise is in persons other than disqualified persons. It was also recognized that some foundations already had holdings in excess of such limits, or were the beneficiaries of irrevocable trusts or wills previously executed which would result in holdings in excess of such limits. Accordingly, a "grandfather clause" was enacted protecting such present business holdings as of May 26, 1969.

Grandfathered holdings are generally permitted to be retained, but are subject to divestiture under certain circumstances as generally described below.

If the combined holdings of disqualified persons and the foundation exceed 50%, the foundation's holdings are to be reduced over several phases. The first phase reduction periods are: 20 years where a foundation held more than 95% of the voting stock of the corporation; 15 years where the foundation and disqualified persons held aggregate interests exceeding 75%; and 10 years in all other cases. At the end of the first phase, foundation/disqualified person holdings cannot exceed (i) 50% of the voting stock of the corporation or, if less, (ii) 50% of the value of all outstanding shares.

After the expiration of the first phase, a second set of divestiture requirements become operational. If disqualified persons never own more than 2% of the corporate voting stock after the close of the first phase, the voting stock held by the foundation must be reduced to not more than 35% within an additional 15-year period. If disqualified persons own more than 2% at any time after the close of the first phase, the stock held by the foundation must be reduced to 25%. Where May 26, 1969 aggregate holdings do not exceed 50%, a further decrease is generally not required if foundation holdings never exceed 25%, but there are exceptions.

Grandfathered holdings are subject to reduction by reason of the "downward ratchet" rule. The rule provides, in effect, that if there is any increase in the holdings of disqualified persons, the holdings of the foundation must be decreased accordingly and can never go up again to the former grandfathered or otherwise permitted level over 20% (or 35%), even though the holdings of disqualified persons are later reduced.

Reasons for Change

The grandfather provisions operate unevenly. In some cases, the foundation and disqualified persons may retain up to 50% of the voting stock of a business enterprise. In other cases, the limit on the foundation is 35% and in some cases it is 25%. And in still other cases the ultimate permitted level is a lesser level which existed on May 26, 1969. The permitted levels vary sharply from the 20% general rule and therefore the need for flexibility is recognized. The rules also recognize the need to retain business holdings in some cases; but they place a greater burden in cases where divestiture is most difficult, i.e., where there are substantial holdings (in excess of 50%). Predictably, these circumstances have led to complaints as to the operation of the statute and, in particular, problems and hardships caused by mandatory divestiture.

Experience since the enactment of the Tax Reform Act of 1969 has demonstrated the existence of unanticipated problems and hardships resulting from the mandatory divestiture provisions relating to grandfathered holdings of private foundations. Economic conditions in general, fluctuating markets in particular and regulatory limitations have made the disposition of stock in a business corporation difficult if not impossible in a number of cases. This is particularly the case where the holdings constitute a substantial part of the outstanding stock of the business. In such cases, sale of the entire holdings of the foundation and disqualified persons may be necessary to realize full value. Even so, a forced divestiture under such circumstances is not likely to bring an adequate price, and charity is likely to be the loser. For these reasons various requests have been made for extensions of time or for exemptions from the mandatory divestiture provisions.

The problems which have come to light also involve the potential loss of local control of enterprises which are substantial local employers or otherwise important to the maintenance of local institutions. Concern also exists over the effect on businesses where the statute creates uncertainties with regard to continuity of ownership and management and represents a serious impediment to business planning.

Proposal for Change and Explanation

It is proposed that § 4943 (c)(4) be amended by adding at the end thereof the following new subparagraph.

"(F) In the case of any foundation otherwise required to dispose of excess business holdings under this paragraph, the time for disposition of such holdings may be extended by the Secretary upon application by such private foundation, made at such time and in such form as may be prescribed by regulations, upon a finding by the Secretary that such an extension is necessary to permit an orderly disposition of such holdings. The Secretary may grant one or more such extensions. If an extension or extensions are granted with respect to the first phase or the second phase, the succeeding phase will not begin until the expiration of the last such extension. The Secretary in granting or denying an extension shall consider, among other factors, the following:

> (i) Whether but for the extension, an orderly disposition of such holdings could not be made in a reasonable time and at full value;
>
> (ii) Whether orderly disposition of such holdings is necessary for reasons beyond the control of the foundation or the business management;
>
> (iii) All other facts and circumstances which the Secretary considers relevant, including size of such holdings relative to enterprises engaged in a comparable trade or business, possible adverse economic impact upon the foundation, the business enterprise (or its other owners) or the community which is reasonably likely to result from a forced disposition of such holdings, litigation pending against the private foundation or the business enterprise or regulations, rules, policies or interests of any governmental

> body, which may inhibit disposition or prevent disposition except on terms less than favorable to the foundation."

The foregoing proposed amendment should permit the Internal Revenue Service to exercise reasonable discretion so the foundations may retain holdings as long or as short a time as is necessary in order to protect the values of the foundation, community interests and other proper concerns. It is not the intent of § 4943 to make a business enterprise a "take-over target" and, where a forced divestiture would have that result, there should be authority to grant an extension to avoid adverse consequences. It is expected that the Service would exercise reasonable discretion to permit the retention of holdings and that all appropriate factors may be taken into account in determining whether and when business interests should be sold. Where a business is a principal employer in a local community, or where the foundation is a principal supporter of charitable and educational institutions in the community, the Service may appropriately take into account community interests, upon a showing that a forced divestiture may place control in the hands of new owners without similar community concerns. In making its determination, the Revenue Service may, but is not required to, obtain the views of the State Attorney General (or other appropriate state official concerned with charitable interests in the state) as to the impact of the divestiture on community interests and values to be realized on an orderly disposition of business holdings.

While it is recognized that providing discretion in the Internal Revenue Service to grant extensions may impose a burden and will require the exercise of sound judgement and evenhandedness on the part of the Service, it is believed, on balance, that charity may thereby be benefitted substantially. The amendment is consistent with the overall purpose of encouraging charitable giving in the public interest.

Exhibit D

to

Statement of Norman A. Sugarman

Subject: IRC § 4943 - Correction of Effect of Certain Changes in the Outstanding Stock of a Business Enterprise

Present Law

Under IRC § 4943 a private foundation is penalized if it and disqualified persons with respect to such foundation have more than a certain percentage interest in a business enterprise; and if the holdings of disqualified persons increase, the foundation is required, in order to avoid a penalty, to dispose of its "excess business holdings. Once the foundation's interest has been decreased, it cannot thereafter be increased to its former level (unless the aggregate holdings of disqualified persons and the foundation in the business enterprise amount to less than 20 percent). This latter rule is commonly referred to as the "downward ratchet rule" and is presently described in IRC § 4943(c)(4).

Example:

> X Corporation is a manufacturing corporation with a publicly traded stock. On May 26, 1969, 13 percent of the stock of X is owned by Mr. A and members of his family, nine percent of the stock is owned by the A Foundation, created by Mr. A's father (now deceased) and one percent of the stock is owned by each of M and N, unrelated individuals, who, with others, including A, serve on the Board of Trustees of the A Foundation. Thus the combined holdings of disqualifed persons and the foundation amount to 24%. X Corporation decides to adopt an incentive stock option plan, as provided in IRC § 422A. To make stock available to employees on exercise of options, the company purchases shares in the market. Such purchases have the effect of decreasing the outstanding shares of X and, correspondingly, increas-

> ing the percentage of holdings in X held by the foundation and disqualified persons. Thereafter X Corporation issues shares to employees upon their exercises of stock options, including to A's son, B, who is included, as an employee, in the group of employees to whom stock options were issued. Upon the issuance of such shares, the number of outstanding shares of X and the percentage of holdings of the foundation in X return to their former level. However, the foregoing events result in the Foundation having "excess business holdings" and require it to dispose of shares because of (a) the temporary increase in the Foundation's percentage of outstanding shares, (b) the temporary increase in the disqualified person's percentage of outstanding shares, and (c) the increase in holdings of B, a disqualified person.

Section 4943(d)(6) generally provides a five year transitional period in the event of an increase in a Foundation's holdings in a business enterprise other than by purchase. However, it does not provide relief because it attributes the increase in the foundation's holdings to disqualified persons, which will have the same result of requiring the foundation to dispose of shares. Other similar problem areas in the application of the statute are set forth below in the description of the reasons for change.

Reasons for Change:

As the above example illustrates, the effect of § 4943 is to inject into corporate business decisions problems involving unusual considerations as to employees or stockholders where there is a foundation involved. In the foregoing example, the granting of the stock option can, instead of providing an incentive to an employee, serve as a disincentive or may create friction between the employee and the foundation or other stockholders (by reason of the fact that the foundation may be forced to dispose of stock).

Other examples are:

> (1) Assume the stockholdings are the same as that described in the foregoing example, and thereafter Corporation X issues

> additional shares by way of a public offering to raise capital or in the acquisition of another business conducting operations similar or supplemental to those of X Corporation. The percentage of the outstanding stock held by disqualified persons and the foundation decreases; but thereafter, by reason of the downward ratchet rule, the foundation cannot purchase additional shares (such as in the open market) to maintain its proportionate holdings in X Corporation. Further, once the foundation's level of holdings has so decreased, if disqualfied persons with respect to the foundation purchase shares in order to maintain their percentage of ownership, then the foundation will be required to dispose of shares, thereby further reducing its holdings. Such inability to maintain a bloc of shares in a corporation can adversely effect the value of the foundation's holdings. Further, such effect could put a brake on normal business decisions, because the corporation, by so acting, may be adversely affecting certain shareholders.
>
> (2) Assume the same stock holdings as in the above example, except that Mr. M, a trustee of the foundation, dies, creating a vacancy on the board. This decreases the holdings of the disqualified persons in the foundation in the aggregate. Under Treasury Regulations if M is immediately replaced by another trustee who has the same or fewer shares as Mr. M, the downward ratchet rule would not apply; but if Mr. M is replaced by a person with fewer shares or none at all, or is not replaced for a period of time, any attempts later to fill the vacancy by a person with the same number of shares as M would force the foundation to sell shares.

These examples indicate that the statutes artificially create problems in the making of normal business or fiduciary decisions which problems create artificial restraints that are not necessary to the basic purposes of § 4943.

Proposed Change and Explanation

It is proposed that the following provision be added at the end of § 4943(c)(4)(A):

> "(v) Notwithstanding any other provision of this section, a private foundation may, by retaining or increasing its holdings in a business enterprise, maintain that percentage which constituted its permitted holdings in a business enterprise upon the happening of any of the events described in (a), (b) or (c) below of this division:
>
> (a) Upon the business enterprise increasing the outstanding shares in such business enterprises,
>
> (b) upon the business enterprise decreasing the outstanding shares in such business enterprises by acquiring shares to fund an employee plan described in Section 421, 422, 422A, 423, 424, 401 or 404, or
>
> (c) upon a decrease in the holdings of disqualified persons in the aggregate in a business enterprise followed by an increase (not in excess of such decrease) in the holdings in such enterprise of disqualified persons in the aggregate within 365 days after such decrease, whether such decrease was by reason of a disposition of shares, expiration of the term of a foundation manager or otherwise."

The foregoing provisions would permit a foundation to acquire shares to prevent dilution of its proportionate holdings in the event of a public offering by a corporation. It would permit the foundation to maintain its holdings even though there has been a reduction in the outstanding shares of a corporation in order to fund a plan (referred to in the statute) for the benefit of employees and it would permit the foundation to maintain its holdings even though a disqualified person received additional shares or a beneficial interest in additional shares under any such employee plan. It would also permit a foundation to maintain its percentage of holdings even though, for example, a disqualified person sold shares on the market and another disqualified person purchased an equivalent number of shares within a year, or a foundation manager with shares died and was replaced by another foundation manager with not more shares within a year. It would not permit, in the latter case, a person or persons with a greater number of shares than the deceased foundation manager to become members of the board of the foundation (unless the foundation or another disqualified person disposed of shares in order to keep the same permitted level).

The foregoing changes would permit foundations to maintain permitted holdings without being artificially penalized because of normal business transactions or other events which should not require divesture under the basic purposes of § 4943.

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EXHIBIT E
to
Statement of Norman A. Sugarman

Subject: IRC § 4943 - Restatement of the Level of Permitted Holdings

Present Law

Section 4943 contains a variety of rules prescribing different permitted levels of stock ownership of a private foundation in a business enterprise. If the applicable permitted level is exceeded, a series of excise taxes are imposed which are intended to force divestiture of the excess.

Following is a brief description of the various levels of permitted holdings, which description does not fully reflect the details and complexity of the statutory rules:

(1) 2% de minimis rule: If a private foundation has not more than 2% interest in a business enterprise, § 4943 does not apply to that holding. However, there is an exception which requires the aggregation of the holdings of private foundations (in some cases, also with charitable split interest trusts) so that the *de minimis* rule is applied on the basis of the holdings of related foundations.

(2) 20% rule: The permissible limit of holdings of a private foundation in a business enterprise is 20% of the total outstanding stock of the business enterprise less the aggregate holdings of disqualified persons. Thus, if the holdings of disqualified persons are 17%, the limit on permissible holdings of the private foundation is 3%.

(3) 35% rule: This rule supplants the 20% rule if it can be shown that persons other than disqualified persons with respect to the private foundation control the business enterprise. However, under this rule the permissible limit on the aggregate holdings of disqualified persons and the private foundation is 35%.

(4) 95% present interest rule: This rule is applicable if the foundation had more than a 95% voting stock interest in a business enterprise on May 26, 1969. In

such case, the rule provides a "first phase" of 20 years, at the end of which such holdings must be reduced to 50%.

(5) 75% rule: This rule is applicable if on May 26, 1969 the foundation and all disqualified persons had more than a 75% voting stock interest in a business enterprise. It provides a first phase of 15 years, at the end of which the stockholdings must be reduced to 50%.

(6) 50% rule: This rule is applicable under various circumstances and becomes the permitted level where:

(a) On May 26, 1969 the holdings were in excess of 50%; the combined holdings of the disqualified persons and foundation must be reduced to the 50% level at the end of the first phase.

(b) The 50% level will be retained in the second phase and thereafter if during such second phase all disqualified persons together have holdings in excess of 2%; in such case the limit on the private foundation is 25%.

(7) Third phase 35% rule: This rule is applicable where the foundation and disqualified persons have present holdings of more than 35% (*e.g.*, 50%) but disqualified persons did not have in excess of 2% at anytime during the second phase; in such case, the permissible limit of the holdings of the foundation and disqualified persons after the second phase is 35%, provided that after the close of the second phase, all disqualified persons together have holdings not in excess of 2%.

(8) 35% third phase alternative rule: This rule is applicable where the present holdings of the disqualified persons and private foundation exceeded the 20% limit on May 26, 1969, and during the second phase the holdings of disqualified persons did not exceed 2% but after the close of the second phase, the combined holdings of disqualified persons did exceed 2%; in such case, the permissible limit on the combined holdings of disqualified persons and the foundation is 35% of which not more than 25% shall be held by the private foundation.

(9) Non-voting stock rule: In any case in which all disqualified persons together do not own more than 20% of the voting stock of a corporation, there is no limit on the non-voting stock which may be held by the private foundation.

(10) Downward ratchet rule: This rule applies where the permissible limit is in excess of 20% and there is

a reduction in the percentage holding of the private foundation; the effect of the rule is that once the foundation's percentage goes down, it can never go back up again to the formerly permitted level.

(11) Voting stock/value rule: This rule is applicable in a number of situations and requires that the limitation be applied on a double barrelled basis, i.e., the holdings cannot exceed the permissible limit either in terms of vote or in terms of the percentage of value of all outstanding shares of all classes of stock. Accordingly, the computations indicated above, to determine whether a limit has been exceeded, must be computed in two ways where there is more than one class of stock outstanding.

The foregoing rules are even more complicated than appears from the above because they are further modified by transitional rules where stock is received by a foundation under a will which was in effect in May 26, 1969 or a trust which was irrevocable on that date or where the interest in a business enterprise is increased other than by purchase by the foundation, such as where business holdings are received by gift or bequest. In addition where the interest in a business enterprise is not in a corporation but in a partnership or joint venture, then the various percentage interests must be determined based upon "profits interest" and "capital interest."

Reasons for Change

The above brief summary of the present law indicates the extreme complexity of § 4943. The complicated rules are beyond the necessity of the subject or policy and become almost unadministrable by the IRS and by organizations alike. The rules have the effect of working opposite to the intent of Congress, i.e., to separate foundation management and business interest; in fact the rules require the business management as well as the Foundation to be aware of every move that may be taken by the business for fear that it unintentionally adversely affect a stockholder, namely, the foundation. For the same reasons, the rules have an unintended result of placing an impediment on normal business decisions.

Further the rules are an impediment to the creation and funding of foundations. The extreme complexity of the rules and the limitations they encompass, are a disincentive to owners of business enterprises from contributing stock of such enterprises to a foundation. More reasonable limits and simpler provisions would encourage such contributions for charitable purposes. Reasonable limits may be provided without creating abuses. Other sections of Chapter 42 of the Internal Revenue Code, including particularly the provisions against self-dealing and taxable expenditures as well as the minimum distribution requirements for charitable purposes, have the effect of requiring the foundations to be currently operated for public charitable purposes and, hence, minimize abuses that were the key motivations for the Tax Reform Act of 1969.

Simplification considerations further dictate that the statute should be re-examined. The extreme complexities provide a trap for the unwary and the expenditure of time and funds in an effort at compliance which expenditures are beyond that which should be reasonably required and which is necessary for the policy underlying the statute.

As the foregoing summary of the various rules have indicated, in many cases permitted holdings can range up to 50%. In the interest of simplification and in the interest of encouraging more funds to be devoted to charity or charitable purposes, § 4943 can be changed to provide a 50% limitation on holdings of disqualified persons and the private foundation in a business enterprise. This would eliminate much of the difficulties in the present statute including the various subordinate and alternative limitations as well as the downward ratchet rule. With respect to the very few foundations with holdings on May 26, 1969 in excess of 50%, separate treatment can be given to such foundations by permitting the retention of their holdings (subject of course to applicable rules with regard to fiduciary standards, the self-dealing rule, etc.) or such cases may be otherwise handled by generally applying the 50% rule and permitting appropriate extensions or exemptions.

Proposal for Change and Explanation

To accomplish the foregoing change, § 4943 should be amended as follows:

(1) Section 4943(c)(2), related to permitted holdings in a corporation, should be amended by striking out the present subparagraphs (A), relating to the present 20% limit, and (B), relating to the 35% rule, changing the designation of subparagraph (C) to (B) and by inserting the following new subparagraph (A).

> "(A) IN GENERAL. - The permitted holdings of any private foundation in an incorporated business enterprise are -

(i) 50 percent of the voting stock, reduced by

(ii) the percentage of the voting stock owned by all disqualified persons.

In any case in which all disqualified persons together do not own more than 50 percent of the voting stock of an incorporated business enterprise, nonvoting stock held by the private foundation shall also be treated as permitted holdings."

(2) Section 4943(c)(4), relating to present holdings, should be amended to read as follows:

"(4) PRESENT HOLDINGS. -

(A) In applying this section with respect to the holdings of any private foundation in a business enterprise, if such foundation and all disqualified persons together have holdings in such enterprise in excess of 50 percent of the voting stock on May 26, 1969 and on January 1, 1983, the lower of the percentages on either of such dates shall be substituted for "50 percent" (if the percentage of such holdings is greater than 50 percent), wherever it appears in paragraph (2). In the case of holdings to which paragraph (5) of this subsection applies, such holdings acquired after May 26, 1969 shall be included for purposes of this subparagraph as held by the foundation on May 26, 1969 and on January 1, 1983.

(B) The percentage substituted under subparagraph (A) shall be applied both with respect to the voting stock and, separately, with respect to the value of all outstanding shares of all classes of stock.

(C) In the case of any merger, recapitalization, or other reorganization involving one or more business enterprises, the application of clauses (A) and (B) shall be determined under regulations prescribed by the Secretary."

(3) Section 4943(c)(5), relating to holdings acquired by trust or will, should be amended to read as follows:

"(5) HOLDINGS ACQUIRED BY TRUST OR WILL. - Paragraph (4) shall apply to any interest in a business enterprise which a private foundation acquires under

> the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter, as if such interest were held on May 26, 1969."

The foregoing changes would greatly simplify the statute by permitting a 50% limitation on business holdings as the general rule. The statute would not interfere with the normal situation in which donors would be interested in contributing stock to a foundation (although, of course, they would need to recognize the limitations inherent in other rules applicable to the foundation and its disqualified persons). It should be kept in mind that the permitted level of 50% is a combined percentage of disqualified persons and the foundation, and the greater the holdings of disqualified persons, the smaller is the portion of 50% limit which is available for foundation holdings.

With respect to grandfathered holdings, i.e., those on May 26, 1969, the amendment would permit a higher than 50% limit to be held, if such higher level of holdings still existed on January 1, 1983. Such percentage, i.e., the lower of that on May 26, 1969 and that on January 1, 1983, would be frozen as the upper limit.

A technical and conforming change would be made in paragraph (5) of § 4943(c), relating to holdings acquired by trust or will. This provision can be simplified because of the simplification of the rules in paragraph (4).

Exhibit F

to

Statement of Norman A. Sugarman

Subject: IRC § 4943 - Treatment of Certain Holdings of
Charitable Split Interest Trusts

Present Law

IRC § 4947 contains special rules with respect to charitable split interest trusts. In general, a charitable lead trust - all of the income interest of which is devoted to charitable purposes, with the remainder interest paid over to private beneficiaries - is subject to the rules applicable to private foundations. Likewise, a charitable remainder trust - all the income interest of which is devoted to private beneficiaries, with the remainder interest devoted to charitable purposes - is subject to the rules applicable to private foundations. However, § 4947 (b) contains special rules with respect to such trusts. Under these rules, charitable remainder trusts are not subject to § 4943; and charitable lead trusts are not subject to § 4943 where the charitable interest is not more than 60 percent of the aggregate value of all amounts in such a trust.

Under § 4943 (c)(2)(C), a two percent *de minimis* rule is provided. This permits a private foundation to hold (together with related foundations) not more than 2% of the voting stock and not more than two percent of the value of all outstanding shares of all classes of stock in a business enterprise, without being subject to the divestiture rules of § 4943, no matter how much stock is owned by disqualified persons with respect to the private foundation.

Despite the fact that § 4947 (b), in effect, exempts the foregoing charitable split interest trusts from the application of § 4943, and despite the fact that under the attribution rules of § 4943 (d) and the Treasury regulations thereunder stock held by a trust is attributed to beneficiaries, the Treasury regulations indicate that business holdings of a charitable split interest trust are to be taken into account by private foundations which are "related" (within the meaning of § 4946 (a)(1)(H)) for the purpose of determining whether the latter fall within the two percent *de minimis* rule.

Reasons for Change

The statute, as applied by the regulations, creates a trap. It is also inconsistent with the policy of the existing law in generally exempting charitable split interest trusts from § 4943.

The fact that a trap for the unwary has been created may be illustrated by the following example.

> Mr. A creates, as part of his estate plan, a testamentary charitable remainder trust for his surviving spouse which qualifies for the marital deduction, as provided by IRC § 2056 (b)(8), as added by the Economic Recovery Tax Act of 1981. Mr. and Mrs. A had previously created the A Foundation which owns less than two percent of the stock of X Corporation, of which Mr. and Mrs. A are principal shareholders. If shares of X Corporation pass to the charitable remainder trust in an amount sufficient to bring the holdings of the A Foundation and the trust to more than two percent of the outstanding stock of X Corporation, the A Foundation will be required to dispose of shares of X. This result would seem to be required under the regulation even though the beneficiary of the charitable remainder trust is not the A Foundation but another foundation or public charity.

The result in the foregoing example is clearly one that would not be anticipated from the specific provision in the statute exempting charitable remainder trusts from the application of § 4943 and also is not consistent with the policy of such exemption under § 4943.

Proposal for Change and Explanation

Section 4943 (c)(2)(C) should be amended by the addition of a sentence at the end thereof providing:

> "For the purpose of applying the preceding sentence, a trust to which sections 4943 and 4944 do not apply by reason of section 4947 (b)(3) shall not be treated as a private foundation described in section 4946 (a)(1)(H)."

The foregoing change will be applicable only for purposes of the de minimis rule and would, for such purposes, exclude from the aggregate holdings of related foundations the holdings of a charitable split interest trust described in § 4947 (a)(2) but only if such trust is itself exempted from § 4943 by reason of the special rules of § 4947 (b)(3). Thus, in the example previously given, a charitable remainder trust which itself is exempt from § 4943 could not cause a private foundation, which is also, in effect, exempt from § 4943 by reason of the de minimis rule, to become subject to a penalty under § 4943 by reason of holdings of the charitable remainder trust. The above change would similarly apply to a charitable lead trust which is exempt from § 4943 by reason of the special rule under § 4947 (b)(3)(A).

However, the change would not affect the present law application of the de minimis rule in the case of a charitable lead trust with more than a 60 percent charitable interest which is not exempted from sections 4943 and 4944 under the special rule of § 4947 (b)(3)(A).

EXHIBIT G
to
Statement of Norman A. Sugarman

Subject: IRC § 4943 - Increase in tne De Minimis Rule

Present Law

Section 4943 places various limits on the "permitted holdings" of a private foundation in a business enterprise. Holdings in excess of such limits are subject to excise taxes unless timely disposition of such holdings is made.

The statute contains a "2% de minimis rule," i.e., if a private foundation has holdings of less than 2% of the voting stock in a corporation, § 4943 is not applicable to such holdings. However, this rule is complicated by the fact that the holdings of related foundations, and in some cases charitable split interest trusts, are aggregated to determine whether the 2% limit has been exceeded.

Reasons for Change

Section 4943 is a very complex provision. It should be applied only to those cases in which the holdings of a private foundation in a business enterprise are substantial, otherwise the cost in terms of loss of use of charitable funds and time and energy of the Internal Revenue Service go beyond the necessities of the statutory policy.

The 2% figure used in the present law is not based upon any particular requirement or precedent. It is a lower percentage than is normally regarded as the holdings which in the securities field will result in a stockholder being treated as an "insider." A relevant standard is that provided in § 16(a) and (b) of the Securities Exchange Act of 1934, which uses a 10 percent equity interest as the dividing line. A holder of more than 10 percent is required to file monthly reports of holdings and changes therein and to pay over to the issuing corporation any profits on purchases and sales of such securities in a period of less than 6 months. The problems of § 4943 will be mitigated in many cases if the de minimis rule is changed to the 10% figure.

Proposal of Change and Explanation

It is proposed that IRC § 4943(c)(2)(C) be amended by striking out "2 percent" wherever it appears therein and inserting in lieu thereof "10 percent."

This change would simply increase the de minimis level to a higher reasonable percentage.

Exhibit H

to

Statement of Norman A. Sugarman

Subject: Section 4943(c)(6) -- Clarification of Treatment of Increase in Business Holdings Acquired other than by Purchase; Transitional Rule

Present law: Under IRC §4943(c)(6) a transitional rule is provided to prevent an immediate penalty tax from being imposed on private foundations which, for reasons other than a purchase, have an increase in their percentage of holdings in a business enterprise in excess of generally permitted limits. Under this rule, if a foundation receives a gift or bequest of stock which would result in holdings over the applicable permitted limit, the foundation is granted five years in which to divest itself before a penalty tax applies. During the five year period, the business holding is considered to be held by disqualified persons with respect to the foundation and not by the foundation itself.

Reasons for change: Since the enactment of this transitional rule, several problems have emerged which result in hardship or otherwise unintended results. One problem is that the five year period of the transitional rule is too short. This is particularly the case where the holdings constitute a substantial part of the equity of a business enterprise. The tremendous changes in economic conditions in the period since 1969 have shown that a proper distribution of shares of stock may not be feasible in a comparatively short period. Further, a sale in a bad market can cause substantial loss to a foundation and a sacrifice of funds which otherwise should be available for charitable purposes. Accordingly, good reasons exist for extending the period of time beyond five years.

Another problem involves determining those situations in which the five year transitional rule applies. In the case of a gift or bequest to a foundation, the statute clearly applies. However, the percentage of holdings of a foundation in a business enterprise may increase or be considered to increase for a number of reasons. Examples include:

(1) A business enterprise buys some of its own shares. This may be pursuant to an obligation or option to buy shares from deceased or retired employees or to fund an employee stock incentive plan or an ESOP.

(2) A corporation in which a foundation has stock acquires an equity interest in another company by a tax free exchange or purchase.

In the first example, the acquisition of shares by the corporation has the effect of decreasing the total outstanding shares and, therefore, increasing the Foundation's percentage of such holdings. In the second example, a question is raised as to whether the acquisition by the corporation in which the Foundation holds stock is to be treated as an acquisition by the Foundation in proportion to its stock holdings.

Under either circumstances, a foundation would be penalized if required to divest promptly even though the acquisition of shares by the business enterprise is accomplished in the ordinary course of its business or pursuant to a business motivated program which is unrelated to the foundation's own holdings. The presence of even these questions serves as a deterrent to donors contributing stock to foundations and thereby deprives charity of assets which could be administered in the public interest.

Proposed change and explanation: In order to meet the foregoing problems, it is proposed that § 4943(c)(6) be amended by (1) changing the present five year period to a fifteen year period, and (2) adding at the end thereof the following additional provisions:

> "The fifteen year period shall be suspended during the time the foundation establishes to the satisfaction of the Secretary that an orderly disposition of the excess business holdings described in subparagraph (A) or the increase in excess business holdings described in subparagraph (B) is not feasible and for five years thereafter; and, without limitations on the foregoing, an orderly disposition of such holdings shall be considered as not feasible:

(C) during pendancy of any judicial proceeding by the private foundation which is necessary to reform or relieve such foundation from compliance with a provision in its governing instrument or any other instrument (as in effect on the beginning of such fifteen year period) in order to allow disposition of such holdings;

(D) As long as the business enterprise is a principal employer in the city, town or other political subdivision in which its principal office or largest operation is located; or

(E) The business enterprise is engaged in the manufacture of products or the management of a facility which is engaged in the manufacture of products, a substantial part of which products are used, or a substantial part of which facility is held for use of the Federal government, in the national defense.

For purposes of this subsection (c)(6), the term "purchase" includes only an acquisition for money or moneys worth (i) directly by the foundation or (ii) by a trade or business described in the subsection (d)(3)(B) in which the foundation holds more than 50% of the voting stock, if in such acquisition the basis of the stock or assets acquired is not determined in whole or in part by reference to the adjusted basis of such stock or assets in the hands of the person from whom acquired."

The foregoing amendments would extend the five year period to a more reasonable time and provide for suspension in circumstances in which an orderly disposition of the stock is not feasible. Objective criteria are provided for common cases in which a suspension is justified, with authority in the Treasury Department to provide suspension in other cases based upon criteria set forth in the proposed amendment.

The amendment also makes clear that a private foundation would not be required to make an immediate divestiture where its holding in a business enterprise would otherwise be considered to increase or result from a change in the stock of the business enterprise caused by a purchase by the enterprise of its own stock or the purchase by an active business, such as a manufacturing company, of stock of another corporation.

Chairman **Rangel**. The Chair will suspend for 15 minutes so we can respond to the rollcall.

We have been advised this is the last vote so we should be able to move rather swiftly following this vote.

[Recess.]

Chairman **Rangel**. The subcommittee will resume.

The chairman of the committee, Mr. Rostenkowski, pointed out to the Chair the fine work the MacArthur Foundation is doing in Chicago.

We welcome the testimony of Dr. Corbally, the president.

STATEMENT OF JOHN E. CORBALLY, PRESIDENT, JOHN D. AND CATHERINE T. MacARTHUR FOUNDATION

Mr. **Corbally**. Thank you, Mr. Chairman.

I will attempt to follow your advice, knowing that you have very complete testimony from both the MacArthur Foundation and a complete copy of my own full testimony.

First I want to say that the MacArthur Foundation shares many of the concerns that have been described for you by the Council on Foundations and while today I want to deal specifically with the 5-year divestiture requirement, I would certainly want to join with the Council on Foundations and support the more general testimony provided earlier.

As you know, the MacArthur Foundation was a recipient of 100 percent of the shares of Bankers Life and Casualty on December 1, 1978. Since that date we have gone through the laborious process of first trying to establish a value of that asset; second, try to determine precisely what all was included in the asset; and, third, to go through the divestiture process required by law.

Our view as a board and the foundation is in support of the excess business holdings requirement in the 1969 law. It is our understanding that when that was discussed it was said that normally 5 years should be sufficient time for a foundation to dispose of excess business holdings.

We would simply argue that the John D. and Catherine T. MacArthur Foundation represents an abnormality in that situation and that it simply is not possible for us to divest it appropriately within the 5-year period.

We have, with the support of Congressmen Conable and Russo, introduced H.R. 2032, which would provide the possibility of Treasury granting an extension of time and it is our hope that through an extension of time we can then, in an orderly way and in the absence of a distress sale situation meet the requirements of the excess business holding in the Tax Act of 1969.

I think I would stop there, Mr. Chairman, and would be prepared to answer questions.

[The prepared statement follows:]

Statement of Dr. John E. Corbally, President of John D. and Catherine T. MacArthur Foundation

SUMMARY

My testimony today deals specifically with the request of the Committee for comments related to the five-year divestiture requirement imposed upon foundations for business holdings acquired by gift or bequest. I would join with the Council on Foundations in the more general testimony provided by the Council.

The John D. and Catherine T. MacArthur Foundation was the recipient of 100 percent of the shares of Bankers Life and casualty Company—an insurance company which also owns substantial real estate assets—and became an active foundation on December 1, 1978. Since that date—in addition to organizing both a new Board of Directors and a staff and conducting programs of philanthropy in keeping with the law and the purposes of the Foundation—the Foundation has vigorously attempted to meet the divestiture requirement. The nature of the assets to be divested, the size of the potential transaction(s), and the state of the economy during this period have all worked to the disadvantage of the Foundation in meeting the requirement. In addition, as time has passed there appears to be a hope on the part of potential buyers that the divestiture requirement will lead to the necessity of a distress sale.

The Foundation believes that an appropriate remedy for this problem is legislation which would provide for an extension of the five-year period for divestiture at the sole discretion of the Secretary of the Treasury upon a finding that such an extension is warranted. Such legislation should provide criteria to guide the Secretary in making such a finding. These elements are embodied in H.R. 2032 introduced by Congressmen Russo and Conable. The MacArthur Foundation understands and supports the intent of the divestiture requirement. The MacArthur Foundation—because of what it believes to be unusual circumstances facing it—supports an extension of the time period within which it must meet that requirement. The MacArthur Foundation does not support an exemption from the requirement.

We have reviewed our dilemma with members of Congress, with officials of Treasury, and with the Council of Foundations—our own professional association. We have found no one who disagrees with our description of the problem nor with the need for a solution. Our purpose is to play our proper role as a philanthropic organization and, within reason, prudence and the requirements of the law, to maximize the assets available to us on behalf of that purpose. I appreciate this opportunity to summarize the statement and supporting materials we have provided you and will be pleased to respond to any questions you may have.

STATEMENT

I am pleased to be here on behalf of the John D. and Catherine T. MacArthur Foundation (the "MacArthur Foundation") to testify regarding the rules governing private foundations and those areas in which changes may be appropriate.

The Committee has requested comments regarding the current rules governing private foundations, in particular, areas in which the current rules may impose unnecessary or unduly burdensome restrictions on those private foundations operating for the public benefit. I would like to focus my remarks on the current five-year divestiture requirement for business holdings acquired by gift or bequest.

I. What Foundations Have Divestiture Problems With Regard to Excess Business Holdings, and Why?

Your Committee first asked which private foundations have divestiture problems with regard to excess business holdings, and why such problems exist. The MacArthur Foundation is an example of one foundation facing an immense problem in meeting the five-year divestiture requirement.

The MacArthur Foundation owns 100 percent of Bankers Life and Casualty Company ("Bankers") which is an insurance company. The assets of Bankers exceed $2.3 billion in value. Besides its insurance assets, Bankers and its subsidiaries own substantial real estate assets. At this point, the Foundation must either sell Bankers' businesses by November 30, 1983, or face the onerous punitive excise tax imposed by Section 4943.

Since receipt of Bankers' shares on December 1, 1978, the Foundation has used all its efforts to diligently comply with the divestiture requirements. It hired two internationally known independent investment advisors to advise it with respect to divestiture alternatives, which included consideration of a public offering. The MacArthur Foundation and its advisors have had over 300 inquiries from both U.S. and foreign enterprises (including certain of the "Fortune 500" corporations) and have held active discussions with over 100 potential purchasers, some in great depth and very extensive discussions. However, no purchaser has been found to date.

The congressional hearings and legislative history of the excess business holdings provisions indicate that a five-year period should normally be sufficient. Our review of foundations created within the last five years clearly indicates that five years would be adequate under normal circumstances. However, due to extraordinary circumstances beyond its control, the MacArthur Foundation is not able to comply with the five-year period.

The reason for the difficulty in achieving the five-year divestiture is primarily the size of Bankers' operations. If Bankers could be sold as one entity, the transaction would rank in the top 20 of all corporate sale transactions to date. Excluding oil companies, the transaction would rank in the top 10.

The size of Bankers' insurance operations is significant in itself. Bankers is primarily engaged in the accident and health insurance field. If Bankers' insurance operations are disposed of, it will be the largest sale of an accident and health insurance company to date and will exceed by two times any previous sales of blocks of such insurance business.

In our review of various foundations, the sale of the MacArthur Foundation's holdings appears as a unique situation in terms of its size. Every foundation created during the 5-year period from 1975–1979 was less than one-sixth of the size of the MacArthur Foundation. Thus, simply the magnitude of the size of the proposed sale is an unusual burden.

The conglomerate nature of Bankers' operations is also a major reason for difficulty in achieving divestiture. Bankers' operations are carried out through a network of about 50 corporations and related entities of which Bankers is the parent. The bequest of Bankers is an unusually large transfer of business holdings in which the business is particularly diverse and the corporate structure exceptionally complex.

The attempted divestiture took place during a time (1978–1983) when we experienced a recession, extraordinarily high inflation, and extraordinarily high interest rates. While the Foundation has made all possible attempts to comply, prevailing economic conditions have also impeded divestiture.

There have been other factors which frustrated divestiture. Bankers' real estate holdings are diverse and scattered throughout the United States. Some of the properties are residential, others commercial; other properties are vacant or recreational, such as golf courses, country clubs, and hotels. For example, properties located in New York consist of 10,000 apartment units and numerous commercial and office buildings in Manhattan. Properties in Florida consist of 85,000 acres of vacant land, in addition to numerous recreational facilities. Finding a buyer interested in acquiring these unrelated and geographically dispersed properties has proved impossible to date.

Another problem relates to economic and regulatory aspects of Bankers' insurance operations. Seventy percent of Bankers' insurance operations are accident and health insurance. Insurance business of this type is under intense financial pressure because of skyrocketing medical costs and the difficulty of passing such costs on through increased premiums. Also, a substantial portion of Bankers' policies are Medicare reimbursement policies. As the federal government shifts more of the costs of Medicare to the private sector, the profitability of medical insurance declines. In addition to these problems, the insurance industry is heavily regulated. All of these factors have combined to severely diminish the attractiveness of Bankers' insurance operations.

When legislation was adopted in 1969, various foundations received varying periods of time of 10, 15, or 20 years in which to make divestiture. All but three of the fifty largest foundations were created prior to 1969 and had those substantial periods of time within which to divest. The MacArthur Foundation ranks within the top five largest foundations and is the only foundation of this magnitude with a five-year divestiture period. The drafters of the 1969 legislation obviously could not have foreseen that the five-year divestiture period would result in a distress sale such as the MacArthur Foundation faces, since they could not have predicted the difficulties caused by such a unique situation.

II. Are There Any Circumstances Under Which Relief From the Divestiture Rules Would Be Appropriate?

The circumstances faced by the MacArthur Foundation in attempting to achieve divestiture are examples of the types of circumstances under which relief from the divestiture rules would be appropriate. Relief should be granted when a foundation has made every effort to dispose of its holdings throughout the five-year period, but has been unable to do because of unusual circumstances. An example of an unusual circumstance would be a uniquely large gift or bequest of a business which is exceptionally diverse in its underlying assets and which contains multiple entities located throughout the U.S. Other factors justifying relief include limitations imposed by statute or regulations prescribed by a governmental body which inhibit or prevent disposition of the business holdings, litigation pending against a foundation which prevents or inhibits divestiture, and a recommendation by the Attorney General of the state where the foundation is incorporated (or other state official charged with the administration or supervision of the foundation) that an extension of the divestiture deadline be granted.

III. If Circumstances Justifying Relief Exist, What Form of Relief is Warranted?

Your committee has also asked what form of relief is warranted, assuming that circumstances justifying relief exist.

The statute as presently drafted provides no administrative ability to grant an extension for extraordinary circumstances such as those facing the MacArthur Foundation. Legislative relief in the form of H.R. 2032 introduced by Congressmen Russo and Conable addresses this administrative incapacity.

The MacArthur Foundation is not asking for a complete exemption or an automatic extension for a set number of years. Rather, the Foundation recommends that the granting of an extension and the length of the extension be in the sole discretion of the Secretary of the Treasury. H.R. 2032 provides that a foundation facing a distress sale could submit a request to the Secretary for an extension. The burden would be on the foundation to satisfy the Secretary that an extension is warranted. The legislation sets forth various factors which the Secretary would consider, which would include evidence of the foundation's good faith efforts to dispose of its holdings, findings by the Secretary that the divestiture could not be completed within the required period, evidence of the size of the foundation's holdings as well as other enterprises engaged in a comparable trade or business, adverse economic impact caused by a forced divestiture, other factors beyond the foundation's control, and a recommendation by the Attorney General of the state where the foundation is incorporated that an extension be granted. (The MacArthur Foundation's situation meets these objective criteria for qualification for an extension and the Illinois Attorney General has recommended that an extension be granted to the MacArthur Foundation.)

H.R. 2032 provides objective guidelines which would provide a fair test to any foundation seeking an extension of a divestiture deadline. The objective criteria would remove to a certain extent the administrative burden imposed on the Secretary in granting an extension. Similar criteria already exist in the federal regulations for extensions of the second level tax imposed by the excess business holdings rules. The proposed legislation would merely authorize an extension for the first level tax under a set of criteria already applicable to the second level tax.

Representatives of the MacArthur Foundation have worked closely with the officials of the Treasury Department in preparing H.R. 2032 and appreciated the assistance of the Treasury. The Foundation is open to other suggestions or changes which would allow flexibility in this area.

If the Foundation must sell before December 1, 1983, it will be a distress sale which would mean that the Foundation will not realize a fair price for its holdings. A distress sale will reduce the Foundation's asset base, thereby reducing the Foundation's ability to make charitable distributions. The charitable donees of the Foundation will receive fewer benefits. No federal tax revenues will result from a distress sale. The only person who will benefit from a distress sale will be the purchaser of Bankers who will acquire Bankers' assets at a below market price.

This contraction in the Foundation's ability to support worthy charitable causes would take place at a time when the need for private sector charitable inititative is crucial in light of reduced federal spending. The current administration is on record many times as requesting the private sector to step in to bear a greater share of responsibility for philanthropy. The Foundation hopes to continue its programs which have resulted in grants of $128.0 million during its short five year period of existence. Allowing this additional time will allow the Foundation to realize a reasonable price for its holdings. Enactment of H.R. 2032 would insure this result and allow the Foundation to move forward to fulfill its charitable obligations.

STATEMENT OF THE JOHN D. AND CATHERINE T. MACARTHUR FOUNDATION

The Subcommittee on Oversight of the House Committee on Ways and Means has requested information regarding whether the current rules governing private foundations enacted by the Tax Reform Act of 1969 (P.L. 91-172) (1) ensure that only those private foundations operating for the public benefit enjoy favorable tax treatment and (2) do not impose unnecessary or unduly burdensome restrictions. The Subcommittee has solicited information on a broad range of topics concerning private foundations.

The John D. and Catherine MacArthur Foundation (the "Foundation") wishes to provide information regarding problems with the present statutory structure of the rules governing divestiture of private foundations' business holdings acquired by gift or bequest. The Foundation would in particular like to respond to those issues outlined in Part II A of the Subcommittee's Press Release of May 3, 1983, which were (1) what foundations have divestiture problems with regard to excess business holdings, and why; (2) are there any circumstances under which relief from the divestiture rules would be appropriate; and (3) if such circumstances do exist, what form of relief is warranted.

I. The Description of the Divestiture Problem Facing the MacArthur Foundation and Reasons Therefor

A. Background of the MacArthur Foundation

The MacArthur Foundation, an Illinois not-for-profit corporation, received all of the shares of Bankers Life and Casualty Company ("Bankers") on December 1, 1978, upon termination of a trust created by John D. MacArthur. As required under Section 4943, the Foundation must reduce its ownership in Bankers to 20% or less on or before November 30, 1983.

Bankers is a diversified life insurance company which was acquired by John D. MacArthur in 1935. The present structure reflects a series of acquisitions and consolidations begun in 1942. Exhibit I sets out the current organization chart of Bankers and its multiple subsidiaries. Today Bankers is one of the largest independent underwriters of individual accident and health policies. Accident and health insurance comprises approximately 70% of the total insurance business of Bankers.

At the close of 1982, Bankers had assets of more than $2.3 billion, equity of more than $513.0 million and life insurance in force exceeded $8.1 billion. For the year 1982, the total premiums for the insurance operations exceeded $730.0 million.

Over the years, Bankers and its subsidiaries have followed a strategy of investing a substantial portion of available funds in real estate operations. Significant and diverse real estate properties were accumulated in Florida, New York and elsewhere. Bankers' real estate operation represents one of the largest accumulations of diverse real estate assets held by any one company in the United States. The estimated aggregate value of this extensive real estate holding, net of outstanding mortgages, may exceed $1.0 billion.

B. Efforts to Dispose of Excess Business Holdings

The Foundation has diligently attempted to comply with the divestiture requirements of Section 4943(c)(6). Almost immediately upon receipt of the shares of Bankers on December 1, 1978, the Directors of the Foundation engaged Warburg Paribas Becker Incorporated ("Becker"), an international investment banking concern of the highest reputation, to review divestiture alternatives and to provide an overall valuation of Bankers. Following the initial review by Becker, the Directors engaged Lazard Freres & Co. ("Lazard"), another international investment banking concern, and Becker to advise the Foundation with respect to the disposition of Bankers and to act as agent in divestiture of the insurance operations and real estate holdings. Under the advice and direction of Becker and Lazard, the Foundation has made world-wide selling efforts and contacted more than 100 prospective buyers. To date, these extensive and lengthy marketing efforts have not yielded a single buyer or a group of buyers willing and financially able to purchase all of the stock or assets of Bankers on a reasonable basis.

Negotiations with prospective buyers continue as of the date of this Statement. However, the likelihood of completing a sale prior to November 30, 1983 of the insurance operations and the other active businesses owned by Bankers diminishes each day. At this time, it is virtually impossible for divestiture of the insurance operations and the other active businesses to be accomplished in the next five month period.

C. Reasons for Problems in Satisfying the Divestiture Requirements

The delay in satisfying the divestiture requirements of Section 4943(c)(6) can be attributed to many factors.

The most significant factor is the size and complexity of the combined insurance and real estate operations owned by Bankers. The bequest of Bankers shares was an unusually large transfer of a particularly diverse business in which the corporate structure is unusually complex. Bankers is the parent corporation of an affiliated group that includes about 50 corporations and other entities. If Bankers could be sold in one transaction, the sale would easily rank in the top twenty of all such transactions accomplished to date. If transactions involving oil companies are excluded, the sale of Bankers would rank in the top ten of all such transactions.

The significance of the divestiture of Bankers can be further illustrated by the size of Bankers' accident and health insurance business which comprises approximately 70% of Bankers' insurance operations. The sale of Bankers' accident and health insurance operations will be the largest sale of any such insurance operations to date. In fact, the sale will be twice as large as any previous sale of any accident and health insurance business, clearly signifying the magnitude of Bankers' accident and health insurance business.

Besides the size of Bankers, at least five other factors have contributed to the unique problem facing the MacArthur Foundation in complying with divestiture requirements imposed by §4943(c)(6).

(1) This significant task of divestiture had to be undertaken and accomplished in a five year period during which both the United States and world economies have experienced escalating inflation, record interest rates and little or no economic growth and, in the United States, depressed stock and real estate prices. In fact, economic analyses have noted that the recent recessionary period endured longer and caused greater economic dislocation in terms of unemployment, bankruptcies and evaporation of real economic growth than any period since the Great Depression. While the U.S. economy has recently shown signs of renewed strength, these improvements are arising at the very end of the Foundation's five year divestitute period.

(2) A significant deterrent to disposition of the insurance operations is the fact that accident and health insurance comprises 70% of Bankers insurance operations. Some insurance companies are terminating their accident and health programs due to escalating medical costs and inability to pass such costs on via increasing premiums. Other companies are fearful of committing funds to accident and health insurance due to the increasing medical costs, adverse state regulatory climate and the uncertain status of private accident and health insurance if federal insurance programs are implemented by Congress. Although the U.S. economy in general has improved in recent months, earnings records of corporations in the health and accident insurance field continue to be depressed and lag behind the performance of other U.S. corporations. A large portion of Bankers' policies consist of Medicare supplement policies. To the extent the federal government does not directly fund health care costs of Medicare insureds, the burden is shifted to the private health insurance industry. This burden is reflected in relatively poor earning records and higher loss ratios of companies in the health insurance field.

(3) The conglomerate nature of Bankers' operations also has a significant negative impact on the divestiture. Bankers is comprised of essentially two distinct and substantially unrelated operations - insurance and real estate. This dichotomy limits the number of buyers who would be interested in purchasing both the real estate and the insurance operations which would enable the Foundation to obtain a fair and reasonable price, terms and conditions on sale. The unrelated and incompatible natures of the two operations in fact have the effect of depressing the true market value of each respective operation.

(4) The diversity and extent of the real estate operations alone may preclude a purchase by one buyer or a consortium of buyers. The New York properties are basically improved, comprised of residential (including 10,000 apartment units), commercial and office buildings, with fixed rental rates in various areas in New York City (principally Manhattan). The Florida holdings (consisting primarily of about 85,000 acres of vacant land), involve hotels, golf courses, motels, country clubs,

utilities and real estate for development. Miscellaneous buildings and land holdings are scattered throughout the United States. Each of these operations is separate and distinct and it is unlikely that one buyer or a group of buyers would be interested in both the improved rental properties in New York and the active real estate operations (including real estate development) in Florida. Because of these problems, the Foundation has explored the feasibility of a partial liquidation of Bankers' real estate holdings and has requested a ruling from the Internal Revenue Service as to tax consequences of such a partial liquidation. The Foundation will be faced with the task, assuming disposition of the insurance operations, of finding separate buyers for the other active businesses.

(5) Bankers is an insurance company supervised by various regulatory agencies in the 50 states in which it and its subsidiaries are licensed to do business. Sales which need regulatory approval by their very nature are more difficult and time consuming, constituting a further deterrent to divestiture of the insurance business.

The combination of size and the five added factors mentioned above has resulted in a truly unique problem faced by the MacArthur Foundation in disposing of Bankers in order to comply with the requirement of Section 4943(c)(6). With additional time, the Foundation should be able to divest its interest in Bankers at a fair and reasonable price.

D. Comparison with Divestiture Requirements of Other Foundations

The divestiture of Bankers is singularly significant as compared to divestiture requirements facing other large foundations. Exhibit II is a table compiled by the Foundation Center, a not-for-profit organization located in New York City, which sets forth the fifty largest foundations by assets. The table was based on financial data available for the 1981 fiscal year, the most recent year for which such information is available. Based on such 1981 data, the MacArthur Foundation is ranked fourth among all other foundations in the United States. Its total assets of $927,967,952 are made up primarily of the stock of Bankers. Once all of the operating assets of Bankers are disposed of, the Foundation may well rank second only to the Ford Foundation in size.

The dates of creation or funding of the fifty largest foundations have been inserted on the enclosed table. As evidenced by the data, 47 of the 50 largest foundations were created or funded prior to 1969, the year in which the excess business holding provisions were enacted. Under the excess business holding provisions enacted in 1969, these foundations were granted various extended divestiture periods ranging from 10, 15 and 20 years in which to dispose of their excess business holdings. The MacArthur Foundation has only been granted a five-year period to accomplish the same task which other foundations of comparable or smaller size were allowed to accomplish in considerably longer periods.

The only foundation (besides the MacArthur Foundation) ranked in the top 50 which has been created or funded subsequent to 1969 is the M. J. Murdock Charitable Trust with assets of approximately $140.8 million and the Tandy Foundation with assets of $165.7 million. The Murdock Trust ranks 44th among the largest fifty foundations and is only approximately one-seventh the size of the MacArthur Foundation. The Tandy Foundation ranks 37th and is only approximately one-sixth the size of the MacArthur Foundation. The recent financial statements of the Murdock Trust indicate that its assets are comprised of listed marketable securities and are not subject to excess business holding requirements. Similarly, the Tandy Foundation is not subject to the excess business holdings requirement. Thus, the MacArthur Foundation appears to be the only foundation ranked in the top 50 which must comply with the 5 year disposition period imposed by §4943(c)(6).

The drafters of Section 4943 expressed in the legislative history an expectation that the five-year period would be an adequate period of time to dispose of any excess business holdings. Normally a five-year period would be considered adequate. This expectation is borne out by reviewing those charitable organizations created in the five year period from 1975 to 1979 which could possibly be subject to the 5 year disposition period.

Exhibit III is a summary compiled from the Foundation Directory and 1981 Supplement identifying foundations which have been created or funded by individuals in the five year period 1975 to 1979. From a review of this summary, only the M. J. Murdock Charitable Trust and the Tandy Foundation (mentioned above) are among the fifty largest foundations and are the only foundation (other than the MacArthur Foundation) created or funded during this period with assets in excess of $100.0 million. All of the other organizations are significantly smaller. Only the Adolph Coors Foundation (asset value $54.0 million) and the Jessie Ball DuPont Foundation (asset value $74.6 million) hold assets in excess of $50.0 million, with most of the other foundations below $10.0 million in size. Thus it would appear that foundations created or funded within the period 1975 to 1979 should be able to satisfy the five year divestiture requirements (if applicable) with much less difficulty.

The six other largest foundations (Adolph Coors Foundation, Jessie Ball duPont Fund, The Ira W. DeCamp Foundation, W. W. Smith Charitable Trust, M. J. Murdock Charitable Trust and Tandy Foundation) created within the period 1975 to 1979 have also been reviewed to determine whether they would have any excess business holdings. Inquiry has revealed that none of these foundations is subject to the excess business holding provisions. Of the seven largest foundations created within the period 1975 to 1979, only the MacArthur Foundation is subject to a divestiture requirement at this time.

The five year disposition period would appear to be a reasonable period for divestiture based on the size and holdings of these recently created foundations. The MacArthur Foundation, however, dwarfs in size foundations recently created which could be subject to the five year disposition period. The five year period expected to be adequate for most foundations has been proved to be woefully inadequate for the MacArthur Foundation due to the size and financial complexity of Bankers' operations and other reasons herein stated.

In summary, the factors of size, complexity and incompatibility of holdings of Bankers, the uncertain future of the accident and health industry, and Bankers' diverse and geographically scattered real estate interests of very significant value, have all combined to render the MacArthur Foundation's divestiture by November 30, 1983, virtually impossible, despite the Foundation's continuous efforts to achieve divestiture.

II. Circumstances Under Which Relief From the Divestiture Rules Would be Appropriate

The MacArthur Foundation believes relief from the divestiture rules is appropriate in unusual circumstances where factors beyond a foundation's control have made divestiture by the prescribed deadline impossible. These circumstances would include the situations discussed below.

A. Diligent Efforts to Dispose of the Excess Business Holdings Were Made Throughout the Initial Five Year Period, But Have Failed

An extension is clearly warranted where a foundation has made continuous good faith efforts to dispose of its holdings throughout the entire five year period, but is unable to make a sale at other than below market prices.

As noted above, the MacArthur Foundation initiated its efforts to dispose of its holdings of Bankers almost immediately upon receipt of the Bankers' shares in December 1, 1978. The Foundation's investment advisers, Becker and Lazard, both made comprehensive studies of the market for the Bankers shares on a worldwide basis. With the advice and direction of Becker and Lazard, the Foundation has dealt with the inquiries of over 300 potential purchasers from the U.S. and foreign countries (including certain of the "Fortune 500" corporations). Active negotiations have taken place with over 100 potential purchasers, some in great depth in very extensive discussions. However, no purchaser has been found to date. At this point, any sale by November 30, 1983, will in be all probability have to take place on a distress sale basis. At this juncture, it also appears that potential purchasers are entertaining hopes that the deadline will lead to a distress sale at substantially below market prices. In a situation where a foundation has exhausted all avenues to achieve divestiture during the five year period, an extension should be granted to permit a sale at fair market values.

B. Other Circumstances

Other circumstances under which relief from divestiture would be appropriate include a situation in which litigation is pending against a foundation which prohibits or inhibits disposition of business holdings or the existence of regulations prescribed by a federal, state or local governmental agency which inhibit disposition of such holdings. These circumstances constitute forces beyond the control of the foundation which prevent divestiture.

Other factors which would be grounds for an extension would include evidence that an orderly disposition at fair market value during the initial period was not possible because of such circumstances as the size of the holdings of the foundation relative to other enterprises engaged in a comparable business; possible adverse economic impact of a forced disposition; and the recommendation of the Attorney General of the state of incorporation or state of principal office (or other state official charged with administration or supervision of the private foundation) that an extension be granted. Other unusual circumstances justifying relief from divestiture would include the fact that the gift or bequest is an exceptionally large grant of business holdings in which the business is highly diverse or the corporate structure unusually complex. These circumstances exist in the MacArthur Foundation situation where the bequest as of December 1978 had a value of about $700 million and now has a value which may exceed $875 million and where Bankers is the parent corporation of an affiliated group of over 50 corporations and other entities.

Factors such as those outlined above constitute evidence that, due to circumstances beyond its control, a foundation could not dispose of its holdings within its initial five year period. If a foundation has throughout its initial period diligently sought to effect a divestiture, but for reasons beyond its control has been unable to do so, an extension is warranted.

C. No Additional Tax Revenues Will Result From a Distress Sale

To compel a foundation to enter into a distress sale serves no revenue raising purpose. The U.S. government itself will obtain no additional tax revenues from a sale of any foundation's assets at prices not reflective of true market value. The federal government does not benefit in any respect from a distress sale. The only person or entity benefited by a forced sale will be the purchaser who will acquire excess business holdings assets at below market prices. At this point, it appears that the Foundation cannot dispose of Bankers in an orderly fashion prior to November 30, 1983, the divestiture deadline. If the deadline is not extended, a distress sale is unavoidable. A distress sale will result in a reduced asset base for the MacArthur Foundation.

The persons directly hurt will be the American public who will be deprived of the annual amounts which would have been distributed if the foundation's endowment base had reflected the true fair market value of its assets. A diminished endowment base inevitably will result in a contraction in distributions to charitable organizations. The American public will be adversely affected by diminished grants to educational institutions, hospitals, medical and scientific research organizations, environmental groups, museums, and civic and cultural organizations. This reduction in grants will occur at the very point in time when private sector initiative is crucially needed to replace reduced governmental support of charities.

III. If Circumstances Exist Under Which Relief From the Divestiture Rules Would Be Appropriate, What Form of Relief is Warranted?

The MacArthur Foundation supports legislation which would give the Secretary or his delegates the authority to grant extensions in the five year period during which private foundations must dispose of excess business holdings. The Secretary would be guided by a series of objective criteria in making his determination. Those criteria would include demonstrated good faith and diligent efforts by the private foundation to dispose of its holdings throughout the initial five year period; a finding that an extension is in fact required in order for the private foundation to dispose of its holdings in an orderly manner; and any other factors the Secretary considers relevant, including size of such holdings relative to other enterprises engaged in a comparable trade or business, possible adverse economic impact caused by forced disposition, litigation pending against the private foundation or regulations prescribed by a governmental body, either of which inhibit disposition of such holdings, and the recommendation by the Attorney General of the state where the foundation is incorporated or state of principal office (or other state official charged with administration or supervision of the private foundation) that an extension be granted.

Any extension would apply to any business enterprise whose holdings constitute excess business holdings, whether such business enterprise is owned (a) directly by the private foundation itself or through the foundation's ownership of stock in a corporation which operates such business enterprise or (b) indirectly by the private foundation through a parent corporation's ownership of stock in one or more subsidiaries which operate such business enterprise.

The MacArthur Foundation does not support legislation which would grant any private foundation a wholesale exemption from divestiture, nor does it support or seek any automatic extension of time. The Foundation does believe that an extension, if granted, be at least two years in duration, solely as an administrative convenience.

H.R. 2032, introduced on March 9, 1983 by Congressmen Russo and Conable, sets forth the legislation which the MacArthur Foundation supports. A copy of H.R. 2032 is attached at Tab 1. A similar bill, S. 562, was introduced in the Senate on February 23, 1983, by Senators Percy and Dixon.

A similar grant of discretion to the Commissioner is contained in the regulations under Section 4943 which permit the Commissioner to extend the 90 day correction period for eliminating excess business holdings. The 90 day correction period occurs after imposition of the initial tax on excess business holdings. The Regulation allows the Commissioner to extend this 90 day period if the Commissioner determines that an extension is necessary in order to allow "orderly disposition of excess business holdings". Treas. Reg. 53.4943-9(b)(2). The Regulation sets out a series of factors under which the Commissioner is to determine whether an extension is warranted. Treas. Reg. 53.4943-9(b)(2)(ii).

The factors listed in this Regulation closely approximate the factors contained in H.R. 2032, including good faith efforts by the private foundation to dispose of excess business holdings and the fact that orderly disposition cannot reasonably be expected to occur within the correction period. Consequently, precedent already exists for grants of discretionary authority to the Secretary. H.R. 2032 would simply grant similar authority to the Secretary (or his delegates) to grant extensions of the five year period under a set of factors substantially similar to those already contained in the regulations.

The five year period specified by the Tax Reform Act of 1969 was established fourteen years ago. Recent experience, such as the experience of the MacArthur Foundation, has indicated that this period is in certain cases inadequate to permit orderly sale of business interests when those interests are an unusually large bequest or gift of business holdings in which the business is particularly diverse and the corporate structure is unusually complex. If adhered to, these time periods will cause forced sales of holdings at prices substantially below current fair market value.

IV. Administration of the MacArthur Foundation.

The purpose of Section 4943 was to prevent the continuing control of active businesses by family run private foundations. Congress, in enacting Section 4943, expressed concern that continuing control by family members of the donor caused (a) foundations' assets in many cases to be used for the benefit of members of the family; (b) foundations' activities to be directed away from its charitable duties and toward involvement in the business operations; and (c) an unfair competitive advantage with other businesses not owned by private foundations:

> "The use of foundations to maintain control of businesses, particularly small family corporations, appears to be increasing.... Those who wish to use a foundation's stock holdings to retain business control in some cases are relatively unconcerned about producing income to be used by the foundation for charitable purposes. Even when the foundation attains a degree of independence from its major donor, there is a temptation for the foundation's managers to divert their interest to the maintenance and improvement of the business and away from their charitable duties...
>
> "Where the charitable purposes predominate, the business may be run in a way which unfairly competes with other businesses whose owners must pay taxes on the income that they derive from the businesses." H. Rep. No. 91-413 at 218.

The activities of the MacArthur Foundation have not been in conflict with the intended purpose or policy of Section 4943 but in effect have been in compliance with the statute. The Foundation is working full time in an effort to achieve the divestiture of Bankers. These efforts began upon receipt of the Bankers shares, continue at this moment and will continue in full force. There is no plan to have the Foundation retain control of Bankers, an ongoing business enterprise; in fact, the opposite is true.

The Board of Directors of the Foundation is comprised of John E. Corbally, former President of the University of Illinois; Paul D. Doolen, retired Vice Chairman and President of Bankers Life and Casualty Company; Robert P. Ewing, Chairman and President of Bankers Life and Casualty Company; Gaylord Freeman, former Chairman of the Board of The First National Bank of Chicago; Murray Gell-Mann, Nobel Laureate; Paul Harvey, ABC radio commentator; William T. Kirby, General Counsel of the Foundation; Edward H. Levi, former Attorney General of the United States; J. Roderick MacArthur, son of the late John D. MacArthur; Dr. Jonas Salk, developer of the polio vaccine which bears his name; and Jerome B. Wiesner, former President of the Massachusetts Institute of Technology.

No acts of self-dealing have been committed between the Foundation and its directors. Control of Bankers has not been left to the MacArthur family; in fact, no family member is in any manner associated with Bankers or its subsidiaries.

The Foundation is atypical in that it is not controlled by family interests. The Foundation has only one member of the family of John D. MacArthur on the Board, his son, J. Roderick MacArthur, who is one of eleven active board members. The Board of Directors as so comprised is independent of the family of John D. MacArthur. The Foundation's Board has always concerned itself with charitable activities and has not been diverted from its duties by involvement with the operations of Bankers other than as necessitated by divestiture requirements imposed upon the Foundation.

In the MacArthur Foundation situation, the abuses feared by Congress will not result if an extension of the divestiture period is allowed. As detailed above, the Foundation cannot dispose of Bankers in an orderly fashion prior to November 30, 1983, the divestiture deadline. If the deadline is not extended, a forced sale is unavoidable.

V. Activities of the Foundation.

The Subcommittee on Oversight sought comments on the role that private foundations play in private philanthropy and what philanthropic activities are being undertaken by private foundations. This section will describe the programs which the MacArthur Foundation has undertaken. The extent of funding and the creativity of the programs demonstrate that the Foundation has responded to the present administration's call for increased voluntarism and private sector initiative in light of reduced federal spending.

During the five years of its operation, the Foundation has authorized expenditures of more than $128,000,000 for charitable, educational, scientific, cultural, literary and environmental causes. Recipients have included institutions and organizations located throughout the United States. Exhibit IV sets forth the general categories in which awards have been made during the period from 1978 through 1982. Exhibit V sets forth in greater detail the authorized grants by program areas for the period from 1978-1982.

Currently, the Foundation has focused its efforts in four major areas: The Prize Fellows Program, which awards highly talented individuals in any field of endeavor; the Health Program, which is pursuing promising lines of research inquiry into mental health and psychological and behavioral aspects of health and rehabilitation; the General Grants Program, which has defined issues of interest in the areas of education, governance, justice and mass communication; and the Special Grants Program, which supports cultural and community development activities in the Chicago Metropolitan area.

The Prize Fellows Program makes unrestricted grants to individuals of high creativity and productivity to enable them to devote themselves to their pursuits, free from financial concerns. The Program has been acclaimed as innovative and an investment in inventive and uniquely talented individuals.

The Health Program has focused its efforts on (1) the developmental processes, emphasizing development in the pre-adulthood stages of life; (2) the study of consciousness and unconscious processes; (3) detection and prevention of mental illness; (4) research on the causes and treatment of mental disorders, and (5) research on the relationship between physical and mental health. After the Health Program is fully operational in 1988, the magnitude of its funding of mental health research will be second only to funding by the federal government.

The General Grants Program has encompassed support of a global study of environment and resources, grants to institutions of higher education, grants to organizations which monitor human rights, support to research centers engaged in public policy analysis and formulation, civil and criminal justice, study of public and private pensions and grants to universities to focus on basic learning skills.

The Special Grants Program has focused its support on Chicago area cultural and community development in recognition of John D. MacArthur's and Catherine T. MacArthur's residence in Chicago for many years and the presence of the Foundation staff in Chicago. Grants have been made in support of theater groups, art museums, dance groups, symphonies, opera, and groups dedicated to urban and minority group problems and community revitalization.

In addition to these four major programs, the Foundation has made unrestricted gifts to colleges and universities across the United States and grants of $1,200,000 each to establish John D. MacArthur Chairs at institutions such as Harvard University, the University of Chicago, Northwestern University, University of Illinois, Massachusetts Institute of Technology, the University of Michigan and the University of Wisconsin.

The Foundation has also made a grant of prime undeveloped beach front property in Palm Beach County, Florida, comprising 82 acres valued in excess of $22,000,000, to the State of Florida for a public park and recreational facility. This property is part of the John D. MacArthur Beach State Park.

The Foundation also has supported Harpers Magazine Foundation, which owns and operates Harpers' Magazine, a publication of acknowledged literary excellence. Through Harpers Magazine Foundation, the Foundation supported programs furthering appreciation of American literature, the English language and the study of linquistics. The Foundation has been credited with preserving a magazine of historical significance and literary excellence, which otherwise might have ceased publication.

The above activities illustrate that the Foundation has supported organizations dedicated to solving urban problems and human needs, including needs of disadvantaged and minority youth, problems of the environment, mental health research, and has also supported programs which would not be appropriate for the federal government to pursue (such as the Harpers Magazine Foundation grant). In an era of contracting federal funds available for social and other problems, the MacArthur Foundation has contributed in a significant way to the private sector's responsibility to assume a greater share of the philanthropic burden.

The Foundation has, since its inception, operated with a minimal number of staff personnel, thus minimizing expenses and maximizing charitable distributions.

Extension of the Foundation's divestiture deadline will avoid forced sale of its assets and will permit it to continue its demonstrated history of major awards and support of creative programs designed to assist in solving urgent national and world problems.

98TH CONGRESS
1ST SESSION

H. R. 2032

To amend the Internal Revenue Code of 1954 to permit the Secretary of the Treasury to extend, under certain circumstances, the 5-year period within which private foundations must dispose of excess business holdings.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 1983

Mr. RUSSO (for himself and Mr. CONABLE) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1954 to permit the Secretary of the Treasury to extend, under certain circumstances, the 5-year period within which private foundations must dispose of excess business holdings.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SECRETARY OF THE TREASURY PERMITTED TO EXTEND THE 5-YEAR PERIOD WITHIN WHICH PRIVATE FOUNDATIONS MUST DISPOSE OF EXCESS BUSINESS HOLDINGS.

(a) IN GENERAL.—Subsection (c) of section 4943 of the Internal Revenue Code of 1954 (relating to excise tax on excess business holdings of private foundations) is amended by inserting after paragraph (6) the following new paragraph:

"(7) SPECIAL RULE PERMITTING EXTENSIONS OF 5-YEAR PERIOD BY SECRETARY.—

"(A) IN GENERAL.—Upon receipt of a written request from a private foundation which is subject to the 5-year period described in paragraph (6)(A), the Secretary, after considering the factors described in subparagraph (B) of this paragraph, may grant to such foundation one or more extensions of such 5-year period if the Secretary determines that an extension of time is required for the orderly disposition of such holdings.

"(B) FACTORS APPLICABLE TO DETERMINATION UNDER SUBPARAGRAPH (A).—The Secretary, in granting or denying a request for an extension of time under subparagraph (A), shall consider, among other factors, the following:

"(i) Whether the private foundation has in good faith taken reasonable steps to dispose of the excess business holdings of such foundation throughout the 5-year period (or any period described by an earlier extension of such 5-year period).

"(ii) Whether orderly disposition of such holdings can reasonably be expected to occur before the expiration of the extension period concerned.

"(iii) Any other fact or circumstance which the Secretary considers relevant to such determination, including—

"(I) the size of the excess business holdings of the foundation relative to enterprises engaged in a comparable trade or business,

"(II) the possible adverse economic impact caused by forced disposition of such holdings,

"(III) the pendency of any lawsuit against the private foundation or the existence of any law or rule of law applicable to such foundation which may inhibit or prevent disposition, and

"(IV) the recommendation of the attorney general of the State within which such foundation is incorporated or within which such foundation has its principal office (or any other official of any such State who has the legal responsibility for regulating private foundations) that the extension sought by the foundation should be granted.

"(C) SPECIAL RULES.—

"(i) Any extension of time under this paragraph shall be for a period of not less than 24 months.

"(ii) For purposes of any extension of time under this paragraph, the foundation's interests in the business enterprise the holding of which constitutes excess business holdings shall be the stock or other interest in the business enterprise, or any of its subsidiaries, immediately prior to the grant of any such extension by the Secretary."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of the enactment of this Act.

2. Index to Exhibits

Exhibit I	- Organization Chart of Bankers and Its Subsidiaries
Exhibit II	- Schedule of Fifty Largest U.S. Foundations by Assets
Exhibit III	- Schedule of All Foundations Created by Individuals During the Period 1975 - 1979
Exhibit IV	- Schedule of Authorized Awards by Areas of Interest: 1978-1982
Exhibit V	- Schedule of Authorized Grants by Program Areas, 1978-1982.

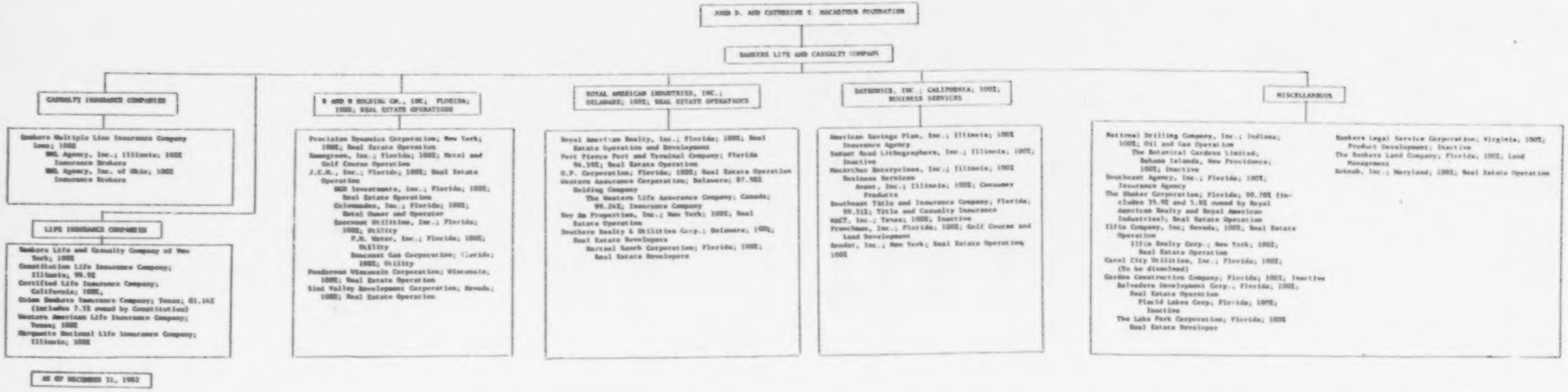
JOHN D. AND CATHERINE T. MACARTHUR FOUNDATION
BANKERS LIFE AND CASUALTY COMPANY
CASUALTY INSURANCE COMPANIES
Bankers Multiple Line Insurance Company Iowa; 100%
BML Agency, Inc.; Illinois; 100% Insurance Brokers
BML Agency, Inc. of Ohio; 100% Insurance Brokers
LIFE INSURANCE COMPANIES
Bankers Life and Casualty Company of New York; 100%
Constitution Life Insurance Company; Illinois; 99.9%
Certified Life Insurance Company; California; 100%,
Union Bankers Insurance Company; Texas; 81.16% (includes 7.5% owned by Constitution)
Western American Life Insurance Company; Texas; 100%
Marquette National Life Insurance Company; Illinois; 100%
AS OF DECEMBER 31, 1982
B AND B HOLDING CO., INC; FLORIDA; 100%; REAL ESTATE OPERATIONS
Precision Dynamics Corporation; New York; 100%; Real Estate Operation
Sawgrass, Inc.; Florida; 100%; Hotel and Golf Course Operation
J.C.M., Inc.; Florida; 100%; Real Estate Operation
BKD Investments, Inc.; Florida; 100%; Real Estate Operation
Colonnades, Inc.; Florida; 100%; Hotel Owner and Operator
Seacoast Utilities, Inc.; Florida; 100%; Utility
F.H. Water, Inc.; Florida; 100%; Utility
Seacoast Gas Corporation; Florida; 100%; Utility
Ponderosa Wisconsin Corporation; Wisconsin, 100%; Real Estate Operation
Simi Valley Development Corporation; Nevada; 100%; Real Estate Operation
ROYAL AMERICAN INDUSTRIES, INC.; DELAWARE; 100%; REAL ESTATE OPERATIONS
Royal American Realty, Inc.; Florida; 100%; Real Estate Operation and Development
Fort Pierce Port and Terminal Company; Florida 96.59%; Real Estate Operation
O.P. Corporation; Florida; 100%; Real Estate Operation
Western Assurance Corporation; Delaware; 87.98% Holding Company
The Western Life Assurance Company; Canada; 99.24%; Insurance Company
Roy Am Properties, Inc.; New York; 100%; Real Estate Operation
Southern Realty & Utilities Corp.; Delaware; 100%; Real Estate Developers
Hartsel Ranch Corporation; Florida; 100%; Real Estate Developers
DATRONICS, INC.; CALIFORNIA; 100%; BUSINESS SERVICES
American Savings Plan, Inc.; Illinois; 100% Insurance Agency
Sunset Road Lithographers, Inc.; Illinois; 100%; Inactive
MacArthur Enterprises, Inc.; Illinois; 100% Business Services
Avant, Inc.; Illinois; 100%; Consumer Products
Southeast Title and Insurance Company; Florida; 99.51%; Title and Casualty Insurance
RACT, Inc.; Texas; 100%; Inactive
Frenchman, Inc.; Florida; 100%; Golf Course and Land Development
Rendor, Inc.; New York; Real Estate Operation 100%
MISCELLANEOUS
National Drilling Company, Inc.; Indiana; 100%; Oil and Gas Operation
The Botanical Gardens Limited; Bahama Islands, New Providence; 100%; Inactive
Southeast Agency, Inc.; Florida; 100%; Insurance Agency
The Shaker Corporation; Florida; 90.70% (includes 35.9% and 5.9% owned by Royal American Realty and Royal American Industries); Real Estate Operation
Ilfin Company, Inc; Nevada; 100%, Real Estate Operation
Ilfin Realty Corp.; New York; 100%, Real Estate Operation
Coral City Utilities, Inc.; Florida; 100%; (To be dissolved)
Gardens Construction Company; Florida; 100%; Inactive
Belvedere Development Corp., Florida; 100%; Real Estate Operation
Placid Lakes Corp; Florida; 100%; Inactive
The Lake Park Corporation; Florida; 100% Real Estate Developer
Bankers Legal Service Corporation; Virginia; 100%; Product Development; Inactive
The Bankers Land Company; Florida; 100%; Land Management
Retnab, Inc.; Maryland; 100%; Real Estate Operation

EXHIBIT 1

FIFTY LARGEST FOUNDATIONS BY ASSETS

NAME	ASSETS	TOTAL GRANTS	DATE OF CREATION OR FUNDING
The Ford Foundation	$2,565,572,000	$84,730,091	1936
Johnson Foundation (The Robert Wood)	$1,421,084,994	$42,002,362	1936
Kellogg (W.K.) Foundation	$1,046,224,366	$51,373,240	1930
MacArthur (John D. and Catherine T.) Foundation	$927,967,952	$31,018,060	1978
The Pew Memorial Trust	$903,469,801	$57,799,993	1948
The Rockefeller Foundation	$883,200,092	$28,855,071	1913
Mellon (The Andrew W.) Foundation	$816,855,412	$58,422,884	1954
Lilly Endowment, Inc.	$779,036,055	$42,277,363	1937
The Kresge Foundation	$681,467,736	$32,294,000	1924
Hewlett (The William and Flora) Foundation	$531,528,674	$12,408,655	1966
Mott (Charles Stewart) Foundation	$471,298,929	$22,938,830	1926
The Duke Endowment	$462,658,021	$36,715,741	1924
Keck (W.M.) Foundation	$460,037,974	$23,750,000	1954
Carnegie Corporation of New York	$301,668,694	$13,353,523	1911
The San Francisco Foundation	$377,540,812	$27,328,844	1947

Based on financial data for the 1981 fiscal year (most recent year for which data available) compiled by the Foundation Center.

EXHIBIT II

NAME	ASSETS	TOTAL GRANTS	DATE OF CREATION OR FUNDING
Mabee (The J.E. and L.E. Foundation, Inc.	$359,090,803	$12,035,640	1948
Mellon (Richard King) Foundation	$357,217,302	$8,775,173	1947
Gannett Foundation, Inc.	$355,935,205	$9,582,627	1935
The McKnight Foundation	$338,143,240	$24,306,736	1953
The Moody Foundation	$330,863,804	$9,766,236	1942
Sloan (Alfred P.) Foundation	$316,397,847	$14,628,563	1934
The New York Community Trust	$302,506,096	$22,779,746	1923
Simon (The Norton) Foundation	$275,960,981		1953
Noble (The Samuel Roberts) Foundation, Inc.	$257,682,872	$6,757,552	1952
Houston Endowment, Inc.	$254,929,215	$18,817,156	1937
The Bush Foundation	$247,719,849	$12,752,164	1953
Clark Foundation	$242,184,000	$12,341,434	1931
Irvine (The James) Foundation	$234,707,730	$13,035,897	1937
The Cleveland Foundation	$223,713,387	$15,738,420	1914
Kaiser (The Henry J.) Family Foundation	$219,904,707	$13,546,522	1948

NAME	ASSETS	TOTAL GRANTS	DATE OF CREATION OR FUNDING
The Starr Foundation	$211,397,501	$3,560,545	1955
Surdna Foundation, Inc.	$210,192,982	$9,466,208	1917
Weingart Foundation	$204,419,381	$13,857,445	1951
The Brown Foundation, Inc.	$202,953,311	$15,067,341	1951
Pew (J. Howard) Freedom Trust	$190,972,954	$14,606,705	1957
Wilder (Amherst H.) Foundation	$190,822,220	$268,799	1910
Tandy (Anne Burnett and Charles D. Tandy) Foundation	$165,760,114	$1,094,475	1978
Penn (The William) Foundation	$165,192,253	$10,437,017	1945
Rockefeller Brothers Fund	$161,839,174	$10,685,849	1940
De Rance, Inc.	$151,413,317	$9,462,867	1946
The Joyce Foundation	$150,679,178	$9,964,913	1948
Simon (Norton), Inc. Museum of Art	$147,306,406	$96,662	1954
Welch (The Robert A.) Foundation	$144,471,869	$13,210,397	1954
Murdock (M.J.) Charitable Trust	$140,842,801	$8,399,392	1975
Alcoa Foundation	$140,560,305	$6,497,488	1964
The Ahmanson Foundation	$139,561,040	$9,763,889	1952
Myrin (Mabel Pew) Trust	$130,680,065	$9,409,148	1957

NAME	ASSETS	TOTAL GRANTS	DATE OF CREATION OR FUNDING
The Commonwealth Fund	$129,821,337	$6,809,285	1918
Warren (The William K.) Foundation	$127,108,204	$3,177,104	1945
The Chicago Community Trust	$126,723,307	$11,298,611	1915

FOUNDATIONS CREATED BY INDIVIDUALS DURING THE PERIOD 1975 - 1979

NAME OF ORGANIZATION	DATE OF CREATION OR FUNDING	DONOR(S)	MARKET VALUE OF ASSETS
Daniel Foundation of Alabama	1978	Charles W. Daniel R. Hugh Daniel	$7,412,917
Arata Brothers Trust	1977	Charles Arata	$2,187,261
Beckman Foundation	1977	Arnold O. Beckman Mabel Beckman	$10,130,956
Civitas Fund	1975	Elsie B. Ballantyne	$2,618,138
MacKenzie Foundation	1978	Sophie MacKenzie	$4,702,632
Jesse & Emma Roney Medical Research	1977	Jesse Roney	$1,355,816
Laura May Stewart Trust	1975	Laura May Stewart	$1,033,457
Torry H. and Dorothy K. Webb Educational and Charitable Trust	1976	Torrey H. Webb	$3,161,144
Adolph Coors Foundation	1975	Adolph Coors, Jr. Gertrude Coors	$54,041,630
Island Foundation	1976	Catherine T. Carrithers	$1,343,523
The Piton Foundation	1976	Samuel Gary	$1,797,007
Sterne-Elder Memorial Trust	1977	Charles S. Sterne	$1,986,951
Cordelia Lee Beattie Foundation Trust	1975	Cordelia Lee Beattie	$1,126,467
Jessie Ball duPont Religious, Charitable and Educational Fund	1976	Jessie Ball duPont	$74,670,333

Based on financial data for the 1981 fiscal year (most recent year for which data available) compiled by the Foundation Center.

EXHIBIT III

NAME OF ORGANIZATION	DATE OF CREATION OR FUNDING	DONOR(S)	MARKET VALUE OF ASSETS
George Delacorte Fund	1977	George T. Delacorte, Jr.	$1,861,913
Marian W. Ottley Trust-Atlanta	1975	Marian W. Ottley	$10,275,273
Marian W. Ottley Trust-Watertown	1975	Marian W. Ottley	$3,527,079
Edward A. Crown Charitable Fund	1977	Edward A. Crown	$3,977,250
Adah K. Millard Charitable Trust	1976	Adah K. Millard	$2,497,654
Jennie G. and Pearl Abell Education Trust	1975	P. G. Abell	$2,023,937
The Marion I. and Henry J. Knott Foundation, Inc.	1977	Marion I. Knott Henry J. Knott	$11,989,908
Thomas Anthony Pappas Charitable Foundation, Inc.	1975	Thomas A. Pappas	$12,254,944
DeRoy Testamentary Foundation	1979	Helen DeRoy	$6,884,451
The Clarence and Jack Himmel Foundation	1975	Clarence Himmel	$1,044,396
Augustus H. Kennedy Memorial Fund	1977	Augustus H. Kennedy	$1,452,938
Oppenstein Brothers Foundation	1975	Michael Oppenstein	$7,738,073
Pendergast-Weyer Foundation	1975	Mary Louise Pendergast	$2,620,687

NAME OF ORGANIZATION	DATE OF CREATION OR FUNDING	DONOR(S)	MARKET VALUE OF ASSETS
Mr. and Mrs. Lyndon C. Whitaker Charitable Foundation	1975	Mae M. Whitaker	$7,625,181
Dr. C. C. and Mabel Criss Memorial Foundation	1978	C. C. Criss, M.D.	$15,740,481
Weller Foundation, Inc.	1979	E. C. Weller Frances W. Weller	$1,187,247
Henry C. Lord Scholarship Lord Trust	1978	Henry C. Lord	$3,102,573
Adrian & Jessie Archbold Charitable Trust	1976	Mr. Adrian Archbold	$9,831,902
Edith C. Blum Foundation	1976	Albert Blum Edith C. Blum	$7,826,324
The Ira W. DeCamp Foundation	1975	Elizabeth DeCamp McInerny	$33,198,036
The Gladys Krieble Delmas Foundation	1976	Gladys Krieble Delmas	$1,069,819
Beatrice P. Delany Charitable Trust	1977	Beatrice P. Delany	$19,230,291
Jean and Louis Dreyfus Foundation, Inc.	1978	Louis Dreyfus	$1,827,241
A. W. Hoernle Foundation	1978	Adolph W. Hoernle	$2,976,250
Bernard B. Hoffman Memorial Foundation	1975	Bernard B. Hoffman	$620,740
B. H. Homan, Jr. Trust	1978	B. H. Homan, Jr.	$3,048,590

NAME OF ORGANIZATION	DATE OF CREATION OR FUNDING	DONOR(S)	MARKET VALUE OF ASSETS
Willard T. C. Johnson Foundation, Inc.	1979	Willard T. C. Johnson	$11,885,888
Annette Kade Fund	1978	Annette Kade	$1,088,317
Kautz Foundation	1976	Charles P. Kautz	$1,535,014
Urban Morgan Educational Fund	1977	Urban Morgan	$1,444,280
Samuel and May Rudin Foundation, Inc.	1976	Samuel Rudin	$1,079,737
H. Smith Richardson Charitable Trust	1976	H. Smith Richardsn	$14,187,728
J. Ford Crandall Memorial Foundation	1975	J. Ford Crandall	$2,871,074
Emma A. Sheafer Charitable Trust	1975	Emma A. Sheafer	$1,760,028
Josephine S. Russell Charitable Trust	1976	Josephine Schell Russell	$3,466,535
Logan Wright Foundation, Inc.	1975	Logan Wright	$1,213,592
The Donald R. Barker Foundation	1977	Donald R. Barker	$3,127,443
Rose E. Tucker Charitable Trust	1976	Rose E. Tucker Max and Rose Tucker Foundation	$9,028,448
Charles Talbot Campbell Foundation	1975	Charles Talbot Campbell	$2,989,744
Ethel Sergeant Clark Smith Memorial Fund	1977	Ethel Sergeant Clark Smith	$6,237,159
W. W. Smith Charitable Trust	1977	William Wikoff Smith	$46,853,566

NAME OF ORGANIZATION	DATE OF CREATION OR FUNDING	DONOR(S)	MARKET VALUE OF ASSETS
Harry E. and Florence W. Snayberger Memorial Foundation	1976	Harry E. Snayberger	$2,756,843
Tandy (Anne Burnett and Charles D.) Foundation	1978	Anne Burnett and Charles D. Tandy	$165,760,114
The Whitaker Foundation	1975	U. A. Whitaker	$265,666*
George D. Widener Trust	1977	George D. Widener	$16,565,088
Eugene Straus Charitable Trust	1975	Eugene Straus	$1,169,376
Hope Pierce Tartt Scholarship Fund	1978	Hope Pierce Tartt	$4,486,137
Marjorie T. Walthall Perpetual Charitable Trust	1976	Marjorie T. Walthall	$1,103,587
The Wiseda Foundation	1976	William S. Davis	$6,395*
Lillian Ethel Dufton Charitable Trust	1975	Lillian Ethel Dufton	$1,393,890
The Thrasher Research Fund	1977	E. W. (Al) Thrasher Mrs. E. W. Thrasher	$16,932,384
The Thomas M. Brooks Charitable Foundation	1977	Thomas M. Brooks	$1,174,442
E. Rhodes Carpenter Foundation	1975	E. Rhodes Carpenter	$178*
Ruth Camp McDougall Charitable Trust	1976	Ruth Camp McDougall	$3,223,839
Norman Archibald Charitable Foundation	1976	Norman Archibald	$3,305,000
M. J. Murdock Charitable Trust	1975	Melvin Jack Murdock	$126,798,345

NAME OF ORGANIZATION	DATE OF CREATION OR FUNDING	DONOR(S)	MARKET VALUE OF ASSETS
Herschel C. Price Educational Foundation	1975	Herschel C. Price	$1,745,365
Charles D. Ortgiesen Foundation, Inc.	1975	Charles D. Ortgiesen	$485,528

* Denotes the book value of the assets

JOHN D. and CATHERINE T. MacARTHUR FOUNDATION

Schedule of Authorized Awards by Areas of Interest
For Fiscal Years Ending December 31, 1978, 1979, 1980, 1981 & 1982

	1978	1979	1980	1981	1982	TOTAL
Chicago Culture	$ 0.	$ 495,000.	$ 1,040,000.	$ 1,032,500.	$ 1,106,500.	$ 3,674,000.
Chicago Community	0.	150,000.	927,500.	1,175,000.	1,953,600.	4,206,100.
Chicago Other	0.	330,000.	1,145,000.	140,483.	600,000.	2,215,483.
Education	0.	105,178.	3,556,340.	645,000.	2,078,000.	6,384,518.
Governance	100,000.	2,500,000.	1,507,500.	1,458,000.	1,801,000.	7,366,500.
Justice	0.	0.	1,350,000.	1,585,000.	1,037,111.	3,972,111.
Mass Communication	0.	100,000.	175,000.	125,000.	0.	400,000.
Miscellaneous	0.	1,050,750.	1,128,400.	1,200,000.	0.	3,379,150.
President's Discretionary Grants	0.	1,000.	40,000.	550,521.	338,032.	929,553.
Out of Program	0.	0.	59,800.	15,900,000.	20,918,416.	36,878,216.
Health:						
Develop. Process	0.	132,000.	2,262,130.	2,072,028.	817,000.	5,283,158.
Conscious/Unconscious	0.	0.	0.	664,396.	0.	664,396.
Prevention/Intervention	0.	0.	471,438.	170,500.	0.	641,938.
Major Mental Disorders	0.	0.	369,791.	2,786,940.	2,220,874.	5,377,605.
Physical/Mental	0.	0.	434,140.	362,735.	0.	796,875.
Other	0.	150,000.	3,650,774.	1,972,346.	1,042,492.	6,815,612.
Recreational Park - Palm Beach County	0.	0.	22,103,800.	0.	0.	22,103,800.
Prize Fellows, Laureate, and Trust	0.	0.	0.	9,231,907.	4,255,900.	13,487,807.
Program Related:						
Harper's Literary Excellence	0.	0.	1,058,612.	2,201,251.	462,961.	3,722,824.
TOTAL	$ 100,000.	$ 5,013,928.	$ 41,280,225.(1)	$ 43,273,607.	$ 38,631,886.	$ 128,299,646.

(1) Does not include $250,000 in 1980 when Harper's was purchased. $250,000 included in 1982 when Harper's Magazine was given to Harper's Magazine Foundation.

NOTE: All Board allocations for support of the areas of interest have not resulted in cash distributions for the periods indicated because specific awards have yet to be made for the Justice Program and two of the Networks in the Health Program. These total $850,000 in 1981; $910,000 in 1982 and $1,760,000 in the Grand Total.

EXHIBIT IV

JOHN D. and CATHERINE T. MacARTHUR FOUNDATION

Schedule of Authorized Grants
by Program Areas, 1978-1982

Program	1978	1979	1980	1981	1982	Total
Prize Fellows	$ 0.	$ 0.	$ 0.	$ 9,194,092.	$ 4,104,000.	$ 13,298,092.
Prize Fellow Institutional & Trust	0.	0.	0.	272,815.	884,400.	1,157,215.
General Grants	100,000.	3,755,928.	7,717,240.	4,628,000.	4,600,611.	20,801,779.
Health	0.	282,000.	7,188,273.	8,028,945.	2,420,766.	17,919,984.
Special Grants	0.	975,000.	3,112,500.	2,322,983.	2,996,100.	9,406,583.
President's Discretionary Awards	0.	1,000.	77,300.	575,521.	634,632.	1,288,453.
Other:						
Recreational Park - Palm Beach County	0.	0.	22,103,800.	0.	0.	22,103,800.
Institute for World Environmental Resource Studies, Inc.	0.	0.	0.	0.	15,000,000.	15,000,000.
Harpers Magazine	0.	0.	1,058,612.	2,201,251.	462,961.	3,722,824.
Harpers Magazine Foundation: Literary Excellence and Award of Harpers Magazine	0.	0.	0.	0.	5,668,416.	5,668,416.
John D. MacArthur Chair Endowments	0.	0.	0.	15,900,000.	0.	15,900,000.
Miscellaneous	0.	0.	22,500.	150,000.	250,000.	422,500.
TOTAL	$ 100,000.	$5,013,928.	$41,280,225.	$43,273,607.	$38,631,886.	$128,299,646.

EXHIBIT V

PRIZE FELLOWS PROGRAM

1981	$9,194,092.
1982	4,104,000.
	$13,298,092.

Recipient	Award Date	Amount	Purpose
Fouad Ajami New York, NY 10025	7-8-82	$188,000.	Prize Fellow Award Studies of Middle Eastern Affairs
A. R. Ammons Ithaca, NY 14850	5-15-81	$264,000.	Prize Fellow Award Poetry
Charles Bigelow 89A Irving St. Cambridge, MA 02138	7-8-82	$192,000.	Prize Fellow Award Graphic Design and Typography
Joseph Brodsky New York, NY 10014	5-15-81	208,000.	Prize Fellow Award Poetry
Peter Brown Berkeley, CA 94703	7-8-82	$232,000.	Prize Fellow Award History
Hugh J. Cairns Brookline, MA 02146	11-12-81	$280,000.	Prize Fellow Award Cancer Research/Microbiology
Gregory Chudnovsky New York, NY 10027	5-15-81	$160,000.	Prize Fellow Award Mathematics
Joel E. Cohen Palo Alto, CA 94305	11-12-81	$192,000.	Prize Fellow Award Mathematics
Robert Coles Concord, MA 10741	5-15-81	$248,000.	Prize Fellow Award Literature

Recipient	Award Date	Amount	Purpose
Richard P. Critchfield Berkeley, CA 94709	11-12-81	$244,000.	Prize Fellow Award Journalism
Robert Darnton Princeton, NJ 08540	7-8-82	$216,000.	Prize Fellow Award History
Persi Diaconis Palo Alto, CA 94306	7-8-82	$192,000.	Prize Fellow Award Mathematical Statistics
Shelly Errington Santa Cruz, CA 94064	5-15-81	$188,000.	Prize Fellow Award Anthropology
William Gaddis 235 E. 73rd St. New York, NY 10021	7-8-82	$280,000.	Prize Fellow Award Writing
Howard E. Gardner Cambridge, MA 02138	11-12-81	$196,000.	Prize Fellow Award Developmental Psychology
John P. Gaventa Strawberry Plains, TN 37871	11-12-81	$172,000.	Prize Fellow Award Social Science & Social Activism
Henry Louis Gates Yale University New Haven, CT 06520	5-15-81	$164,000.	Prize Fellow Award Afro-American literature

Recipient	Award Date	Amount	Purpose
Michael Ghiselin Petaluma, CA 94952	5-15-81	$212,000.	Prize Fellow Award Biology
Stephen J. Gould Cambridge, MA 02138	5-15-81	$200,000.	Prize Fellow Award Paleontology
Ian Graham c/o Peobody Museum Harvard University Cambridge, MA 02138	5-15-81	$272,000.	Prize Fellow Award Archeology
Francesca Rochberg-Halton Chicago, IL 60615	7-8-82	164,000.	Prize Fellow Award History
David Hawkins Boulder, CO 80302	11-12-81	$300,000.	Prize Fellow Award Philosophy and Education
John P. Holdren Oakland, CA 94611	11-12-81	192,000.	Prize Fellow Award Physics and Enviromental Studies
Ada L. Huxtable New York, NY 10028	11-12-81	$284,000.	Prize Fellow Award Architectural Criticism
John Imbrie 55 Pamden Lane Seekonk, MA 02771	5-15-81	$264,000.	Prize Fellow Award Paleoclimatology

Recipient	Award Date	Amount	Purpose
Robert W. Kates 10 Einhorn Road Worchester, MA 01610	11-12-81	$252,000.	Prize Fellow Award Geography/Hazards Research
Raphael C. Lee 88 Myrtle Street Boston, MA 02114	11-12-81	$172,000.	Prize Fellow Award Surgery/Biomedical Engineering
Elma Lewis Dorchester, MA 02121	5-15-81	$280,000.	Prize Fellow - Fine Arts
Cormac McCarthy Knoxville, TN 37914	11-12-81	$236,000.	Prize Fellow Award - Fiction
Barbara McClintock Cold Spring Harbor, NY	11-12-81	$534,092.	Prize Fellow Laureate
James McPherson Charlottesville, VA 22901	5-15-81	$192,000.	Prize Fellow Award - Fiction
Ved Mehta 1035 Fifth Avenue New York, NY 10028	7-8-82	$236,000.	Prize Fellow Award Writing
Robert Moses 17 Peabody Terrace Cambridge, MA. 02138	7-8-82	$232,000.	Prize Fellow Award Teaching and Social Activisim
Roy Mottahedeh Princeton, NJ 18540	5-15-81	$204,000.	Prize Fellow Award Near Eastern Studies

Recipient	Award Date	Amount	Purpose
Richard Muller Berkeley, CA 94705	7-8-82	$196,000.	Prize Fellow Award Physics
Richard C. Mulligan 11 Sumner Road Cambridge, MA 02138	11-12-81	$152,000.	Prize Fellow Award Cancer Research/Biochemistry
Conlon Nancarrow Mexico, Cadigo, Mexico	7-8-82	$300,000.	Prize Fellow Award-Music
Alfonso Ortiz Santa Fe, NM 87501	7-8-82	$216,000.	Prize Fellow Award Anthropology
Douglas Osheroff Bridgewater, NJ 08807	5-15-81	$184,000.	Prize Fellow Award Low Temperature Physics
Elaine Pagels New York, NY 10024	11-12-81	$196,000.	Prize Fellow Award Humanities Rsearch & Writing
David Pingree Providence, RI 02912	11-12-81	$236,000.	Prize Fellow Award - History of Science
Paul Richards Nyack, NY 10960	11-12-81	$196,000.	Geophysics and Theoretical Seismology
Robert Root- Bernstein LaJolla, CA 92037	5-15-81	$152,000.	Prize Fellow Award Biochemistry

Recipient	Award Date	Amount	Purpose
Richard M. Rorty Princeton, NJ 08540	11-12-81	$244,000.	Prize Fellow Award Philosophy
Lawrence Rosen Princeton, NJ 08540	5-15-81	$200,000.	Prize Fellow Award Anthropology
Charles Sabel 2 Ware Street, Apt. 307 Cambrdige, MA 02138	7-8-82	$180,000.	Prize Fellow Award Social Science
Carl Schorske Princeton, NJ 08540	5-15-81	$300,000.	Prize Fellow Award History
Ralph Shapey Chicago, IL 60637	7-8-82	$288,000.	Prize Fellow Award Music
Leslie Silko Tucson, AZ 85705	5-15-81	$176,000.	Prize Fellow Award - Writing
Michael Silverstein Chicago, IL 60615	7-8-82	$188,000.	Prize Fellow Award Anthropology and Linguistics
Joseph H. Taylor Princeton, NJ 08540	11-12-81	$204,000.	Prize Fellow Award Astronomy and Astrophysics
Derek Walcott Cambridge, MA 02138	5-15-81	$248,000.	Prize Fellow - Poetry

Recipient	Award Date	Amount	Purpose
Robert Penn Warren Fairfield, CT 06430	5-15-81	$300,000.	Prize Fellow Award Poetry
Randolph Whitfield Bethesda, MD 20814	7-8-82	$220,000.	Prize Fellow Award - Health
Frank Wilczek Goleta, CA 93117	7-8-82	$168,000.	Prize Fellow Award Physics
Frederick Wiseman Zipporah Films 54 Lewis Wharf Boston, MA 02110	7-8-82	$252,000.	Prize Fellow Award Film
Edward Witten Princeton, NJ 08540	7-8-82	$164,000.	Prize Fellow Award - Physics
Stephen Wolfram Pasadena, CA 91101	5-15-81	$128,000.	Prize Fellow Award Theoretical Physics
Michael Woodford 234 Huron Avenue Cambridge, MA 02138	11-12-81	$148,000.	Prize Fellow Award Legal Theory and Economics
George Zweig Pasadena, CA 99106	11-12-81	$220,000.	Prize Fellow Award Physics and Neurobiology

PRIZE FELLOWS INSTITUTIONAL AWARDS

1981	$ 272,815.
1982	884,400.
	$1,157,215.

Recipient	Award Date	Amount	Purpose
American Foundation for the Blind New York, NY 10011	9-29-82	$15,000.	Unrestricted Grant
Association of American Indian Affairs, Inc. New York, NY 10016	10-12-82	$15,000.	Unrestricted Grant
The Australian National Univ. Canberra, Australia	8-19-82	$3,750.	Unrestricted grant
Barnard College New York, NY 10027	3-8-82 6-21-82	$7,500. $7,500.	Unrestricted Grant
The Boston Cecilia Boston University Brookline, MA 02146	4-26-82	$5,000.	Unrestricted Grant
Boston University Boston, MA 02215	11-11-81 7-1-82	$15,000. 1,500.	Unrestricted Grant
Brown University Providence, RI 02912	7-15-81 1-5-82 6-8-82	$15,000. $15,000. $10,000.	Unrestricted Grant.
University of California, Berkeley Berkeley, CA 94720	4-12-82 9-1-82	$11,250. $15,000.	Unrestricted Grant
University of California, LaJolla LaJolla, CA 92093	10-18-82	$5,000.	Unrestricted grant
University of California,Santa Barb. Santa Barbara, CA 93106	11-3-82	15,000.	Unrestricted grant

Recipient	Award Date	Amount	Purpose
University of California, Santa Cruz Santa Cruz, CA	9-24-81	$10,000.	Unrestricted Grant
California Institute of Technology Pasadena, CA 91125	3-30-82	$15,000.	Unrestricted Grant
Cambridge University Library Cambridge, England	11-11-81	$5,000.	Unrestricted grant
Carnegie Institution of Washington Washington, DC 20036	2-11-82	$15,000.	Unrestricted grant.
Center for Advanced Studies in the Behavioral Sciences Stanford, CA 94305	3-24-82	$10,000.	Unrestricted Grant
University of Chicago Chicago, IL 60637	11-24-82	$15,000.	Unrestricted grant
Clark University Worcester, MA 01610	4-21-82	$15,000.	Unrestricted Grant
University of Colorado Boulder, CO 80309	6-24-82	$15,000.	Unrestricted Grant
Columbia University New York, NY 10027	3-2-82 6-21-82	$15,000. $15,000.	Unrestricted Grant

Recipient	Award Date	Amount	Purpose
Cornell University New York, NY 10021	11-11-81	$15,000.	Unrestricted Grant
Grant Avenue Community Center Plainfield, NJ 09063	6-11-82	$15,000.	Unrestricted Grant
Harvard University Cambridge, MA 02138	7-1-81	$15,000.	Unrestricted grant.
	9-24-81	$15,000.	
	9-24-81	$15,000.	
	1-12-82	$15,000.	
	4-5-82	$10,000.	
	8-19-82	$15,000.	
	8-25-82	$15,000.	
	12-20-82	$15,000.	
Highlander Research and Foundation Center New Market, TN 37820	2-11-82	$15,000.	Unrestricted Grant
The Iliff School of Technology Denver, CO 80210	11-16-82	$15,000.	Unrestricted Grant.
Institute for Advanced Study Princeton, NJ 09840	5-5-82	$5,000.	Unrestricted Grant
	11-3-82	15,000.	
Institute of Current World Affairs Hanover, NH 03755	10-12-82	$15,000.	Unrestricted Grant.

Recipient	Award Date	Amount	Purpose
International Eye Foundation Bethesda, MD 20814	8-30-82	$15,000.	Unrestricted Grant
University of Iowa Foundation Iowa City, IA 52242	3-2-82	$15,000.	Unrestricted Grant
Johns Hopkins University Washington, DC 20036	11-3-82	$15,000.	Unrestricted grant.
Elma Lewis School of Fine Arts Dorchester, MA 02121	9-24-81	$15,000.	Unrestricted
Massachusetts Institute of Technology Cambridge, MA 02139	12-9-81 1-20-82 10-5-82	$15,000. $15,000. $15,000.	Unrestricted Grant
New York University New York, NY	11-25-81 11-25-81 11-22-82 12-20-82	$15,000. $15,000. $15,000. $15,000.	Unrestricted Grant
North Dakota State University Fargo, ND 58105	5-17-82	$6,000.	Unrestricted Grant.
University of Notre Dame Notre Dame, IN 46556	11-3-82	$15,000.	Unrestricted Grant

Recipient	Award Date	Amount	Purpose
Eugene O'Neill Memorial Theater Center, Inc. Waterford, CT 06385	7-19-82	$13,500.	Unrestricted Grant.
Princeton University Princeton, NJ 08544	9-24-81	$15,000.	Unrestricted Grant
	9-24-81	15,000.	
	11-22-82	15,000.	
	3-2-82	7,500.	
	4-14-82	15,000.	
	8-3-82	15,000.	
	11-3-82	15,000.	
	11-9-82	15,000.	
	11-11-82	15,000.	
University of Rhode Island Kinston, RI 02881	6-7-82	$5,000.	Unrestricted Grant
The Rockefeller University New York, NY 10021	11-3-82	$5,000.	Unrestricted Grant
Rocky Mountain Biological Laboratory Ithaca, NY 14853	4-12-82	$3,750.	Unrestricted Grant
Social Science Research Council. New York, NY 10016	11-16-82	7,500.	Unrestricted Grant
The Salk Institute San Diego, CA 92138	4-21-82	$15,000.	Unrestricted Grant
Stanford University Stanford, CA 94305	11-23-82	$15,000.	Unrestricted Grant

Recipient	Award Date	Amount	Purpose
State Historical Society of Iowa Iowa City, IA 52240	5-17-82	$4,000.	Unrestricted Grant
State Historical Society of Wisconsin Madison, WI 53706	5-17-82	$5,000.	Unrestricted grant
Telarana, Inc. Tucson, AZ 85705	9-24-81 7-12-82	$15,000. $15,000.	Unrestricted Grant
University of Utah Salt Lake City, UT 84603	7-1-81 6-7-82	$10,000. $10,000.	Unrestricted grant
University of Virginia Charlottesville, VA 22903	4-21-82	$3,750.	Unrestricted grant.
Yale University New Haven, CT 06520	7-1-81 6-28-82	$15,000. $15,000.	Unrestricted Grant
MacArthur Prize Fellow Association Trust Chicago, IL 60603	1981 1982	$37,815. $151,900.	To enable the Prize Fellows to communicate with one another on a regular basis, whether in person or otherwise, in order to exchange ideas, share knowledge and experiences resulting from their participation in the Prize Fellows Program.

GENERAL GRANTS

1978	$ 100,000.
1979	3,755,928.
1980	7,717,240.
1981	4,628,000.
1982	4,600,611.
	$20,801,779.

Recipient	Award Date	Amount	Purpose
American Academy of Arts and Sciences Cambridge, MA 02138	10-14-82	$125,000.	In support of Phase I of the European Security Study.
Alliance to Save Energy Washington, DC 20006	8-28-79	$50,750.	Conference on 10/17-18/79 at Dumbarton Oaks, Washington, DC on "Energy Conservation: Blue-Print for the 80's"
Alliance to Save Energy Washington, DC 20006	12-18-80	$250,000.	Support Energy Incentives
American Bar Association Fund for Public Education Chicago, IL 60606	12-18-80 12-17-81 3-11-82	$100,000. $535,000. $695,241.	Cost containment and general support
American Council for an Energy-Efficient Economy Berkeley, CA 94720	4-10-81	$100,000.	Support of start-up activities for a one year period.
American Council of Learned Societies New York, NY 10022	3-11-82	$1,000,000.	Support of central program activities other than fellowship awards
American Council on Education Washington, DC 230036	12-18-80	$207,500.	Program support.
Amnesty International New York, NY 10019	12-1-78	$50,000.	General Support

Recipient	Award Date	Amount	Purpose
Aspen Institute for Humanistic Studies New York, NY 10022	12-18-80	$430,000.	Program Support
Better Government Association Chicago, IL 60601	5-15-79	$2,500,000.	Independent studies and investigations relating to waste in government expenditure at federal,state and local levels.
Big Brothers/Big Sisters of America Philadelphia, PA 13103	10-30-80	$125,000.	General support.
Brigham Young University Provo, UT 84602	12-18-80	$150,000.	Internships
John Brown University Siloam Springs, AR 72761	5-15-79	$100,000.	Grant towards construction of the Communications Section of the Learning Resource Center Complex.
Chicago Community Trust Chicago, IL 60604	7-8-80	$200,000.	Energy conservation
Chicago Council on Foreign Relations Chicago, IL 60603	2-11-82	$360,000.	Three year support for the "American Public Opinion and U.S. Foreign Policy" project
Chicago Crime Commission Chicago, IL 60603	12-18-80 12-17-81	$100,000. $100,000.	Program development

Name	Award Date	Amount	Purpose
Civic Action Institute Washington, DC 20036	12-17-81	$158,000. -$54,000.	Support of peer to peer technical assistance program.
Committee for Economic Development New York, NY 10022	10-30-80	$100,000.	Program Support
Cosmopolitan Chamber of Commerce Chicago, IL 60649	12-18-80	$43,400.	For support of the proposal entitled: "A Planning Grant Proposal for a Program to Develop Viable Minority Contractors"
Edna McConnell Clark Foundation National Institute for Dispute Resolution New York, NY 10017	12-18-80	$300,000.	Program Support
Council on Foreign Relations New York, NY 10021	2-11-82	$300,000.	Three year support of the Council's International Fellowship Program
Education Development Center Newton, MA 02160	9-16-80	$100,000.	Development
Education Development Center Newton, MA 02160	12-17-81	$100,000.	Support of the "Energy in Perspective" project.

Recipient	Award Date	Amount	Purpose
The Enterprise Foundation Columbia, MD 21044	11-11-82	$500,000.	In support of its staffing and operations.
Executive Service Corps. of Chicago Chicago, IL 60604	12-18-80	$90,000.	Operating support and supprt to Chief Financial Officer-Chicago Board of Education.
The Foundation Center New York, NY 10019	5-31-80	$50,000.	General Support
Foundation for Illinois Archeology Evanston, IL 60204	12-18-80	$250,000.	Program support
Georgetown University Center for Strategic and International Studies Washington, DC 20006	7-8-80 9-16-80	$75,000. 67,500.	Program support.
Helsinki Watch New York, NY 10017	12-18-80 12-17-81	$100,000. $300,000.	Monitor Compliance with Helsinki Accord
John Howard Association Chicago, IL 60603	10-14-82	$183,870.	Support two year project entitled: "Alternatives to Incarceration"
Institute for Philosophical Research Chicago, IL 60611	5-15-79 11-25-80	$105,178. $53,840.	Award for the Institute for Philosophical Research's "Project Paideia" in conjunction with the Aspen Institute for Humanistic Studies

Recipient	Award Date	Amount	Purpose
International Management and- Development Institute Washington, DC 20006	10-30-80	$250,000.	Program support.
League of California Cities Sacramento, CA 95814	12-1-78	$50,000.	Undertake an independent research and analysis of local government issues
League of Women Voters Education Fund Washington, DC 20036	9-16-80	$25,000.	Program support
Minnesota Sentencing Guidelines Commission St. Paul, MN 55101	3-30-82 10-14-82	$25,000. $65,500.	Support of the completion of an evaluation of the effectiveness and system impact of Minnesota Sentencing Guidelines.
NAACP Legal Defense and Educational Fund New York, NY 10017	10-30-80	$250,000.	Training Program
National Academy of Sciences Washington, DC 20418	5-15-81	$1,000,000.	Support of a program of self-initiated, policy-oriented studies.
National Energy Foundation New York, NY 10017	12-18-80	$20,000.	General support

Recipient	Award Date	Amount	Purpose
National Heritage Foundation Annandale, VA 22003	7-8-80	$35,000.	Publication support
National Humanities Center Research Triangle Park, NC 27709	3-11-82	$400,000.	Direct costs for the first and second years of a two-year seminar entitled Business and Human Excellence: The Links Between Commerce and Culture".
National News Council New York, NY 10023	10-30-80	$50,000.	Program of freedom of the press
National Resource Center for Consumers of Legal Services Washington, DC 20036	11-25-80	$100,000.	Improve legal services.
Northwestern University Comm. on Inst. Cooperation Rebecca Crown Center Evanston, IL 60201	9-16-80	$395,000.	Fellowships
Opportunities Industrialization Center of America Philadelphia, PA 19144	9-16-80	$100,000.	Fellowships
Palace of Arts and Sciences Foundation San Francisco, CA 94123	9-10-81	$1,000,000.	Support of the educational and cultural activities of the Exploratorium
Rand Corporation Santa Monica, CA 90406	12-18-80 12-17-81	$200,000. $500,000.	General support

Recipient	Award Date	Amount	Purpose
Reading is Fundamental Washington, DC 20560	12-17-81	$210,000.	Support of the development of materials and a plan for parental encouragement at home of reading skills and good reading habits in children.
Resources for the Future Washington, DC 20036	8-28-79	$1,000,000.	General support.
The Safer Foundation Chicago, IL 60603	12-18-80 12-17-81	$300,000. $300,000.	Program support - skills program for young former prisioners
Scientists Institute for Public Information New York, NY 10017	12-18-80 12-17-81	$125,000. $125,000.	Support of Media Resource Service
Stanford University The Hoover Institution Stanford, CA 94305	12-18-80	$425,000.	Domestic studies on War, Revolution and Peace.
United Negro College Fund New York, NY 10021	7-8-80	$2,500,000.	Faculty improvement
United States Olympic Committee Colorado Springs, CO 80909	9-16-80	$100,000.	General support.
The Urban Institute Washington, DC 20037	3-11-82	$1,000,000.	Support for two years of a program of research as described in the proposal entitled "Changing Domestic Priorities"

Recipient	Award Date	Amount	Purpose
Washington Center for Learning Alternatives Washington, DC 20036	12-17-81	$200,000.	Support of the first and second years of development of internship opportunities in the arts, humanities and labor studies and support of the first year for expansion of the symposia program.
World Food Corporation New York, NY 10036	11-25-80	$50,000.	General Support

HEALTH PROGRAM

1979	$ 282,000.
1980	7,188,273.
1981	8,028,945.
1982	2,420,766.
	$17,919,984.

Recipient	Award Date	Amount	Purpose
American Academy of Child Psychiatry Washington, DC 20036	11-25-80	$50,000.	To be used toward completion of the project entitled "Project Future" as described in proposal dated 10/79.
American Bar Association Fund for Public Education Chicago, IL 60637	11-25-80	$304,759.	Support for Criminal Justice Mental Health Standards Project.
Anna Freud Foundation New York, NY 10024	10-8-81	$300,000.	Program research described in proposal "A Project to Study Variations of Normality and Pathology in Relation to Personality Development"
Austin Riggs Center, Inc. Stockbridge, MA 01262	11-12-81	$50,890.	Two year program of research as described in the proposal entitled A Strategy for Measuring Changes in Ways of Thinking, Imagining and Behaving During Intensive Psychotherapy of Seriously Disturbed Young Adults.
Boston University School of Medicine Boston, MA 02118	9-10-81	$9,560.	Interdisciplinary Award - Behavioral Research Colloquium.
Bowling Green State University Bowling Green, OH 43403	6-15-81	$9,152.	Interdisciplinary research seminar on the developmental and educational
University of California, Berkeley Inst. of Human Development Berkeley, CA 94720	7-8-80	250,000.	Project "Family Socialization and Developmental Competence"

Recipient	Award Date	Amount	Purpose
University of California, Berkeley Berkeley, CA 94720	12-18-80	$379,640.	Three year program entitled "Stress Coping and Mental Health"
University of California, Berkeley Inst. of Human Development Berkeley, CA 94720	12-18-80	$715,024.	Two year program of research entitled: "Interdisciplinary Study of the Life Course".
University of California, Irvine Irvine, CA 92717	9-10-81	$50,000.	Support for 1st and 2nd years of program of research entitled: "Cellular Metablic Effects of States of Consciousness"
University of California, L.A. Los Angeles, CA 90024	5-15-81	$120,000.	Two year research program as described in the proposal entitled: "Attention/Information Processing and Vulnerability to Schizophrenia"
University of California, L.A. Los Angeles, CA 90024	4-8-82	$17,250.	Support of participation in MacArthur Research Network on the Transition from Infancy to Early Childhood
University of California, LaJolla LaJolla, CA 92093	4-10-81	$42,000.	Support of a mathematical kineticist/computer programmer and for computer time as described in proposal entitled: "A Pilot Project in Integrative Clinical Neurobiology"
University of California, LaJolla LaJolla, CA 92093	11-12-81	$92,723.	Two year program of research as described in proposal entitled: "Alterations in Dendritic Spine Shape Following Receptor Stimulation and Blockade"
University of California, LaJolla LaJolla, CA 92093	4-8-82	$92,000.	Support of participation in MacArthur Research Network on the Transition from Infancy to Early Childhood

Recipient	Award Date	Amount	Purpose
Univeristy of California, S.F. San Francisco, CA 94143	6-18-81	$300,000.	Three year program of research as described in the proposal entitled "Facial Signals of Emotion""
California Institute of Technology Pasadena, CA 91125	10-30-80	$312,200.	Three year program of research entitled: "To Determine the Amino Acid Sequence of Human Immune Interferon and to Clone the Corresponding Genes"
Carnegie-Mellon University Pittsburgh, PA 15213	6-15-81	$10,000.	Interdisciplinary Seminar on Mental Health Policy.
Center for Advanced Studies in the Behavioral Sciences Stanford, CA 94305	7-8-80	$1,000,000.	Fellowships - Mental Health
University of Chicago Chicago, IL 60637	4-10-81	$248,040.	Two year support for program of research described in proposals - "A Longitudinal Community Study of Delinquency " ane "The Effects of Variation in Family Structure"
University of Chicago Chicago, IL 60637	11-12-81	$50,000.	Two year program of research as described in proposal entitled "Child and Adolescent Policy Research Project"
University of Chicago Chicago, IL 60637	11-12-81	$118,146.	Three year program of research as described in proposal entitled "Schizophrenia Immunoglobulin Studies"
University of Chicago Chicago, IL 60637	11-12-81	$49,147.	One year program of research as described in proposal entitled: "Segregation Analysis of Red Cell Lithium Transport in a Large Pedigree"

Recipient	Award Date	Amount	Purpose
The Children's Memorial Hospital Chicago, IL 60614	5-15-79	$25,000.	Partial salary support of a physician to work with Director of Ambulatory Care Division in organizing and implementing Primary Care Service within the overall Ambulatory Care Program.
City of Hope National Medical Center Duarte, CA 91010	11-12-81	$100,000.	Two year program of research as described in proposal entitled "Biochemical Genetics of Depression"
University of Colorado Health Sciences Center Denver, CO 80262	7-8-80	$54,500.	Support of research team for 6 months to continue investigation of effects of emotional health on physical health and effects of mental-health treatment on physical health and utilization of other medical services.
University of Colorado Denver, CO 80262	11-25-80	$159,150.	Support of a three-year project entitled "A 25 Year Follow-up of a Longitudinal Study of Early Personality Development".
University of Colorado Denver, CO 80262	10-30-80	$10,000.	Research proposal entitled "Frontiers in Current Psychobiological Investigation".
University of Colorado Denver, CO 80262	11-12-81	$57,874.	Two-year program of research as described in the proposal entitled Affect Regulation in Infancy: Normal and Pathological".

Recipient	Award Date	Amount	Purpose
University of Colorado Denver, CO 80262	10-8-81	$12,735.	To continue investigation of the effects of emotional health on physical health and the effects of mental health treatment on physical health and the utilization of other medical services.
University of Colorado Denver, CO 80262	11-12-81	$101,463.	Two-year program of research as described in the proposal "Childhood Antecedents of Adult Mental Health".
University of Colorado Denver, CO 80262	4-8-82	$327,750.	For the coordination of the MacArthur Research Network on the Transition from Infancy to Early Childhood.
University of Colorado Denver, CO 80262	4-8-82	$92,000.	For support of the participation of the research group in the MacArthur Research Network on the Transition from Infancy to Early Childhood.
Columbia University New York, NY 10032	10-30-80	$10,000.	Interdiscipliânry Award - Mental Health
Columbia University in the City of New York New York, NY 10032	7-16-81	$350,000.	Three year program of research described in proposal entitled: "Neural Development, Synaptic Plasticity and Learning
Cornell University New York, NY 10021	3-20-81	$9,964.	Interdisciplinary Award - Mental Health

Recipient	Award Date	Amount	Purpose
Duke University Medical Center Durham, NC 27710	3-20-81	$10,000.	Support of three Interdisciplinary programs in the Department of Psychiatry.
Evanston Hospital Evanston, IL 60201	5-15-79	$10,000.	To purchase a transcutaneous oxygen monitor for the Infance Special Care Unit
Evanston Hospital Evanston, IL 60201	5-15-79	$115,000.	For the purchase of equipment in connection with the on-going reconstructing and regionalization of the cardiac care facility of Evanston Hospital.
Foundation for Advanced Education in the Sciences Bethesda, MD 20205	4-8-82	$84,000.	For support of the participation of the research group in the MacArthur Research Network on the Transition from Infancy to Early Childhood.
Good Samaritan Hospital West Palm Beach, FL 33402	2-6-81	$500,000.	Not to exceed $500,000 towards the cost of a Varian 18 Million Volt Linear Accelerator.
GROW (U.S.A.) Marrichville, N.W. Australia	4-29-80	$25,000.	Seed funding
Harvard University Cambridge, MA 02138	12-18-80	$652,460.	Support fo a three-year program of research entitled "Research on Mental Health Policy".

Recipient	Award Date	Amount	Purpose
Harvard Medical School Cambridge, MA 02138	11-25-80	$8,420.	Program Support
Harvard University Cambridge, MA 02138	11-12-81	$250,000.	Two year program of research entitled: The Power Motive and Behavioral Medicine
Harvard University Cambridge, MA 02138	11-12-81	$322,750.	Five year program of research as described in the proposal "The Significance of Behavioral Inhibition During the Preschool Years: A Longitudinal Study"
Harvard University Cambridge, MA 02138	3-11-82	$20,000.	One year program of research as described in the proposal entitled: "Longitudinal Studies".
Harvard University Cambridge, MA 02138	4-8-82	92,000.	Support of the participation of the research group in the MacArthur Research Network on the Transition from Infancy to Early Childhood.
Harvard University Boston, MA 02115	5-14-82	$782,892.	Seven year project as described in the proposal entitled "M.D./Ph.D. Program in the Social Sciences".
University of Houston Houston, TX 77004	7-16-81	$153,788.	Program of research entitled Observational Assessment Systems for Residential Mental Health Research and Services".

Recipient	Award Date	Amount	Purpose
University of Houston Central Campus Houston, TX 77004	9-16-80	$67,934.	Interim support for Dr. Gordon Paul's work on "Evaluation of Treatment Programs and Assessment Procedures for Adult Mental Health Patients".
University of Illinois Medical Center Chicago, IL 60612	6-15-81	$9,500.	Interdisciplinary Award - Mental Health
University of Illinois Chicago, IL 60612	5-1-82 10-14-82	$120,000. 18,000.	Support of research group in the MacArthur Research Network on the Psychobiology of Depression
Illinois State Psychiatric Institute Chicago, IL 60612	3-11-82	$42,850.	Two year research program entitled" "Evoked Potentials in Psychiatric Disorder: Relationships to Bio-Chemistry and Symptomatology"
Illinois State Psychiatric Institute Chicago, IL 60612	3-11-82	$81,818.	Three year research program entitled: "Timing or Subtypes: A Systematic Comparison of Two Competing Models to Account for Sex Differences in Schizophrenia"
Indiana University Foundation P. O. Box 1847 Bloomington, IN 47402	9-10-81	$105,975.	Support of three-year program in proposel entitled "The Effects of Experience and Gender on the Hippocampus and Behavior".
Insurance Network for Social, Urban and Rural Efforts Washington, DC 20006	11-12-81	$100,000.	A one-year evaluation of the Lifecycle Preventive Health Services Project.

Recipient	Award Date	Amount	Purpose
International Study Center for Environmental Health Sciences Valhalla, NY 10592	7-8-82	$85,900.	One year research project on the chemistry and epidemiology of micronutrients in health maintenance
Judge Baker Guidance Center Boston, MA 02115	3-4-81	$8,917.	One year's support for an ID forum and working seminar: "Culture, Human Development and Mental Health".
Long Island Research Institute Health Sciences Center 10T Stony Brook, NY 11794	12-18-80	$10,000.	Interdisciplinary Award - Mental Health
University of Louisville Foundation, Inc. Louisville, KY 40292	5-15-81	$341,735.	Proposal entitled "Assessment of Temperament in Infant Twins"
University of Massachusetts Amherst, MA 01002	12-18-80	$9,000.	Interdisciplinary Award in Mental Health
Massachusetts Institute of Technology Cambridge, MA 02139	3-20-81	$10,000.	Interdisiplinary Awrd for series of faculty and research staff mini-symposia.
McLean Hospital Corp. 115 Mill Street Belmont, MA 02178	11-12-81	$294,720.	Three year program of research as described in the proposal entitled: "Studies of the Etiology of Schizophrenia, Utilizing a National Sample of Schizophrenic Adopteed and their Families"

Recipient	Award Date	Amount	Purpose
McLean Hospital Corp. 115 Mill Street Belmont, MA 02178	11-12-81	166,005.	Three year program of research as described in the proposal entitled "Program of Molecular Biological Investigation of the Senile Brain in Alzheimer's Disease".
McLean Hospital Corp. Belmont, MA 02178	5-1-82 10-14-82	$120,000. 18,000.	Support of the research group in the MacArthur Research Network on Psychobiology of Depression.
Meharry Medical College Nashville, TN 37203	12-18-80	$300,000.	General support.
Mental Health Law Project Washington, DC 20036	5-15-81 9-9-82	$200,000. $150,000.	Support for the continuation of legal and social policy research.
Michael Reese Hospital and Medical Center Chicago, IL 60616	11-25-80	$157,666.	Three year support for phase three of the project entitled: "The Young Adult and Adolescent Decision-Making about Contraception"
Michael Reese Hospital and Medical Center Chicago, IL 61616	12-18-80	10,000.	Interdisciplinary Award-Mental Health
Michael Reese Hospital and Medical Center Chicago, IL 60616	12-28-80	$197,857.	Three year support for research entitled: "A Program of Research to Study Processes Involved in Psychosis"

Recipient	Award Date	Amount	Purpose
Montefiore Hospital & Med. Ctr. New York, NY 10467	10-23-81	$10,000.	Interdisciplinary Award - Mental Health
National Academy of Sciences Washington, DC 20418	4-10-81	$200,000.	Support of a Series of National Forums on Issues of Child Development Research & Public Policy Affecting Children and their Families.
National Alliance for the Mentally Ill Washington, DC 20005	4-29-80 10-8-81	$78,650. $200,000.	General support.
National Center for State Courts Williamsburg, VA 23185	10-30-80	$100,205.	Support model project
University of Nebraska Medical Center Omaha, NE 68105	10-30-80 9-10-81	$8,700. $9,650.	Support of an interdisciplinary program in mental health and memory.
Neurosciences Research Fdn. Jamaica Plain, MA 02130	7-8-80	$525,000.	To establish a neurosciences research institute to investigate the relationship of brain functioning to higher mental processes with no commitment for subsequent funding.
Northwestern University Evanston, IL 60201	10-23-81	$9,960.	Interdisciplinary Award - Mental Health
Northwestern University Rebecca Crown Center Evanston, IL 60201	11-12-81	$375,336.	Three year program of research described in proposal entitled: "Depression, Meaning and Inference: A Schema Approach"

Recipient	Award Date	Amount	Purpose
University of Oregon P. O. Box 3237 Eugene, OR 97403	3-20-81	$10,000.	Supprt of the "Visiting Neuroscientists" program.
Pennsylvania State University University Park, PA 16802	5-15-81	$300,954.	Support of a three-year program described in the proposal entitled The New York Longitudinal Study: Enhancing its Archival and Future Contributions.
University of Pennsylvania Philadelphia, PA 19104	12-18-80	$104,000.	Support of a three-year program of research described in the proposal entitled "Profiles of Cognitive Pathology in Alzheimer's Disease".
University of Pittsburgh Office of Research Pittsburgh, PA 15260	3-4-81	$9,938.	Support of the Visiting Scientist Program .
University of Pittsburgh Pittsburgh, PA 15260	5-1-82 10-14-82	$120,000. $18,000.	Support of the research group in the MacArthur Research Network on the Psychobiology of Depression.
Pitzer College The Claremont Colleges Claremont, CA 91711	6-18-81	$24,660.	Three year program of research described in proposal entitled: "The Achievement of Eminence: A Longitudinal Study of Exceptionally Gifted Boys and Their Familes"

Recipient	Award Date	Amount	Purpose
Prime Time School Television Chicago, IL 60603	5-15-79	$125,000.	A joint effort with the Harris Foundation in supporting the cost of producing a one hour film for television on the subject of "Bonding and Attachment"
Public Committee on Mental Health Washington, DC 20036	1-22-80 5-15-81 10-14-82	$100,000. $75,000. $60,000.	General support.
Rehabilitation Institute of Chicago Chicago, IL 60611	7-8-80 9-10-81	$50,000. $21,945.	Survey study on existing rehabilitation services in Chicago.
Research Foundation for Mental Hygiene, Inc. New York, NY 12229	9-10-81	$284,095.	Three year program of research described in proposal entitled "Psychosocial Adaptation from Adolescence to Young Adulthood"
Research Foundation of State University of New York Albany, NY 12201	7-16-81	143,506.	Two year program of research - "Affect: A Model Phenomenon for the Study of Psychobiology of Consciousness"
The Rockefeller University New York, NY 10021	11-12-81	$130,000.	Two year program of research described in proposal "Variables Controlling Visceral Learning"

Recipient	Award Date	Amount	Purpose
University of Rochester Medical Center Rochester, NY 14642	6-15-81	$10,000.	Interdisciplinary Award - Mental Health
Rutgers Medical School College of Medicine and Dentistry of New Jersey Newark, NJ 07103	5-18-81	$9,500.	Support of a series of 15 seminars on "Neuroepileptic Disorders and Mental Health".
The Salk Institute San Diego, CA 92138	4-10-81	$109,100.	Research entitled: "Effects of Early Experience on the Functional Organization of the Human Brain"
The Salk Institute San Diego, CA 92138	5-1-82 10-14-82	$120,000. 18,000.	Support of research group in the MacArthur Research Network on the Psychobiology of Depression
Southern Illinois University at Carbondale Carbondale, IL 62901	12-18-80	$10,000.	Interdisciplinary Award-Mental Health
Stanford University Stanford, CA 94035	11-25-80	111,259.	Project entitled "Longitudinal Analyses of Parent-Child Relations"
Stanford University Stanford, CA 94035	12-18-80	$316,346.	Three year program of research entitled "Chronic Stress in Children and Youth"
Stanford University Stanford, CA 94305	3-4-81	$10,000.	Project: "The Developmental Research Seminar: The Integration of an Academic and Clinical Program in Child Psychiatry"

Recipient	Award Date	Amount	Purpose
Stanford University Stanford, CA 94305	3-11-82	$295,306.	Three year program of research described in proposal entitled "Measuring Environmental Stressors and Coping Resources"
Stanford University Stanford, CA 94305	5-1-82 10-14-82	$120,000. 18,000.	Support of research group in the MacArthur Research Network on the Psychobiology of Depression
Stanford University Stanford, CA 94305	5-1-82 10-14-82	$100,000. 15,000.	Support of research group in the MacArthur Research Network on the Psychobiology of Depression
University of Texas, Austin Austin, TX 78712	5-15-81	$50,000.	Support of the direct costs of a one-year program of research as described in the proposal entitled "Biomedical and Clinical Research on Tetrahydro-Biopterin".
University of Texas Medical Branch Galveston, TX 77550	5-15-79	$7,000.	For travel and consulting costs for the development of research protocol on the development of health behavior in children.
University of Texas Galveston, TX 77550	10-30-80	$159,800.	Support of research on Interferons as Anticancer Agents.
University of Texas System Cancer Center Houston, TX 77030	2-6-81	$500,000.	Production or purchase of immune interferon for use in connection with therapeutic studies with cancer patients.

Recipient	Award Date	Amount	Purpose
University of Virginia Charlottesville, VA 22903	12-18-80	$395,265.	Four year program of research entitled "A longitudinal Study of Adaptation to Remarriage in Stepfamilies"
Virginia Commonwealth Univ. Richmond, VA 23284	7-16-81	$90,457.	Research program entitled "Family Relations in Early Adolescence"
University of Washington Seattle, WA 98195	10-23-81	$9,260.	Interdisciplinary Award - Mental Health
University of Washington Seattle, WA 98195	4-8-82	$92,000.	Support of research group in the MacArthur Research Network on the Transition from Infancy to Early Childhood.
Western Behavioral Sciences Institute La Jolla, CA 92037	10-23-81	$10,000.	Interdisciplinary Award - mental and physical health
The Wright Institute of the Oregon Social Learning Center 2728 Durant Ave. Berkeley, CA 94704	12-18-80	$446,438.	Two year program of research as described in the proposal entitled: "A Microsocial Analyses of Resistance"
Yale University New Haven, CT 06520	12-18-80	$99,000.	Investigation of biopsychological studies of severe psychiatric disturb-
Yale University New Haven, Ct. 06520	11-12-81	$170,500.	Three year program of research described in the proposal entitled Television and Family Living Patterns: A Study of Pre-Schoolers and Their Parents.

Receipt	Award Date	Amount	Purpose
Depression Network	1981	$700,000.	Authorized but unallocated grant
Major Mental Network	1982	$805,000.	Authorized but unallocated grant
Determinants Network	1982	$805,000.	Authorized but unallocated grant

SPECIAL GRANTS

1979	$ 975,000.
1980	3,112,500.
1981	2,322,983.
1982	2,996,100.
	$9,406,583.

Recipient	Award Date	Amount	Purpose
The Adler Planetarium Chicago, IL 60605	10-15-79 1-22-80 7-16-81 10-14-82	$25,000. $25,000. $20,000. $35,000.	General support
Albany Park Community Center Chicago, IL 60625	4-29-80	$37,500.	Loan retirement
American Heart Association Palm Beach Chapter Dallas, TX 75231	4-29-80 5-15-81	$25,000. $25,000.	For general support by the Palm Beach, Florida County Chapter of the American Heart Association
The Animal Rescue League of the Palm Beaches, Inc. West Palm Beach, FL 33407	1-22-80	$25,000.	Construction
	5-15-81	$25,000.	General Support
The Anti-Cruelty Society Chicago, IL 60610	4-29-80 5-15-81	$25,000. $25,000.	Construction and general support
The Art Institute of Chicago Chicago, Il 60603	8-28-79 1-22-80 7-16-81 3-11-82	$50,000. $50,000. $50,000. $75,000.	General support
Association House of Chicago Chicago, IL 60647	10-14-82	$77,000.	Support of staff salaries for Computer Training Program
Better Boys Foundation Chicago, IL 60602	12-18-80	$100,000.	Program support

Recipient	Award Date	Amount	Purpose
Businessmen for the Public Interest Chicago, IL 60602	12-18-80 3-11-82	$25,000. $25,000.	Operating support
Chicago Architecture Foundation Chicago, IL 60616	11-11-82	$15,000.	General operating support
Chicago Chamber Orchestra Assoc. Chicago, IL 60604	10-14-82	$5,000.	Operating support
Chicago Children's Choir Chicago, IL 60637	11-11-82	$15,000.	General operating support
Chicago City Ballet Chicago, IL 60610	11-12-81 10-14-82	$40,000. $35,000.	General operating support
The Chicago City Theatre Co. 410 S. Michigan Chicago, IL 60605	11-12-81	$5,000.	Operating support for the Joel Hall Dancers
Chicago Council on Fine Arts Chicago, IL 60602	12-18-80 7-16-81	$40,000. $40,000.	Program support and support to emerging arts organizations
Chicago Historical Society Clark Street at North Ave. Chicago, IL 60614	8-28-79 1-22-80 7-16-81 10-14-82	$25,000. $25,000. $20,000. $25,000.	General support
Chicago Horticultural Society Chicago, IL 60603	10-15-79 1-22-80 7-16-81 10-14-82	$25,000. $25,000. $25,000. $25,000.	General support

Recipient	Award Date	Amount	Purpose
Chicago Opera Theater Chicago, IL 60605	12-18-80	$25,000.	Operating support
	11-12-81	$35,000.	
	9-14-82	$25,000.	
Chicago Repertory Dance Ensemble Chicago, IL 60657	11-11-82	$5,000.	General operating support
Chicago Symphony Orchestra Chicago, IL 60604	8-28-79	$50,000.	General support
	12-18-80	$50,000.	
	6-18-81	$50,000.	
	3-11-82	$75,000.	
Chicago Theatre Group, Inc. Chicago, IL 60603	7-16-81	$50,000.	Unrestricted grant to be used for The Goodman Theatre
	3-11-82	$75,000.	
Chicago Theater Foundation Chicago, IL 60611	12-18-80	$10,000.	Operating support
	10-14-82	$15,000.	
Chicago United Chicago, IL 60602	11-12-81	$175,000.	Support of the Career Development Centers.
Chicago Urban League Chicago, IL 60653	12-18-80	$100,000.	Construction
Chicago Zoological Society Brookfield, IL 60513	8-28-79	$25,000.	General support-
	1-22-80	$25,000.	
	7-16-81	$25,000.	
	10-14-82	$15,000.	

Recipient	Award Date	Amount	Purpose
Christian Action Ministry Chicago, IL 60644	12-18-80	$300,000.	General support
Cinema/Chicago Chicago, IL 60610	11-12-81 10-14-82	$15,000. $15,000.	General support
Community Arts Foundation Chicago, IL 60614	12-18-80 12-11-81	$15,000. $15,000.	Operating support
The John Crerar Libarary Chicago, IL 60616	10-15-79 1-22-80 7-16-81 10-14-82	$15,000. $15,000. $40,000. $35,000.	General support
Community Renewal Society Chicago, IL 60602	3-11-82	$213,800.	Funding first year of the Neighborhood Revitalization Technical Assistance Program
Designs for Change Chicago, IL 60604	5-14-82	$150,000.	Support of Chicago Reading Campaign
Donor's Forum of Chicago Chicago, IL 60604	1-9-79	$5,000.	General support
The DuSable Museum of African American History, Inc. Chicago, IL 60637	7-16-81 10-14-82	$20,000. $15,000.	General operating support
Emergency Fund for Needy People Chicago, IL 60601	11-11-82	$20,000.	General operating support

Recipient	Award Date	Amount	Purpose
Executive Service Corps of Chicago Chicago, IL 60604	5-14-82	$89,000.	Support of Chicago School Board Project to provide 18 retired executive consultants
Family Focus, Inc. Evanston, IL 60201	3-11-82	$100,000.	Support establishment of a fullservice center for teenaged parents in the Lawndale community
Field Museum of Natural History Chicago, IL 60605	8-28-79 1-22-80 7-16-81 3-11-82	$50,000. $50,000. $50,000. $75,000.	General support
Foundation for the Extension and Development of the American Professional Theatre New York, NY 10036	7-16-81	$12,500.	Support of 2nd year of American Professional Theatre's Chicago Management Development Workshop
Gads Hill Center Chicago, IL 60608	5-15-79	$25,000.	To renovate and upgrade facilities
The Goodman Theater Chicago, IL 60603	10-15-79 1-22-80	$15,000. $15,000.	General support
Harris Bank Foundation Citizens for Safety Vests Chicago, IL 60690	4-8-82	$500,000.	Challenge grant to purchase bullet resistant vests for Chicago Police Force
Helen Hayes Hospital West Haverstraw, NY 10993	12-18-80	$500,000.	Support of research program

Recipient	Award Date	Amount	Purpose
University of Illinois at Chicago Circle Chicago, IL 60680	11-11-82	$25,000.	Support the Chicago Fact Book Consortium's production of the 1980 Local Community Fact Book
Historic Pullman Chicago, IL 60628	12-18-80 11-12-81	$15,000. $15,000.	Operating support
Holy Angels School Chicago, IL 60653	6-10-82	$45,000.	General operating support
Horizons for the Blind Chicago, IL 60626	7-16-81 10-14-82	$15,000. $15,000.	General operating support
Hubbard Street Dance Company Chicago, Il 60610	11-12-81 10-14-82	$5,000. $15,000.	General operating support
Illinois Citizens Animal Welfare League Chicago, IL 60637	5-15-79	$50,000.	General support
Imagination Theater, Inc. Chicago, IL 61645	11-11-82	$15,000.	General operating support
Infant Welfare Society of Chicago Chicago, IL 60614	5-14-82	$77,000.	Support of the Infant-Toddler Parent Program and enable executive staff to secure training and consultant assistance in private sector fund raising
Inroads, Inc. Barrington, IL 60076	12-18-80	$45,000.	Pre-Collegiate Program
	3-11-82	$22,500.	Challenge grant to encourage increased corporate support for precollegiate program in business and engineering for minority high school students

Recipient	Award Date	Amount	Purpose
Jobs for Youth-Chicago, Inc. Chicago, IL 60605	12-18-80 10-14-82	$125,000. $88,200.	Operating support and to establish basic skills Training Program
Juvenile Protection Association Chicago, IL 60611	5-15-79	$25,000.	Project on abused and neglected children of divorce, with the cooperation of the Divorce Division of the Circuit Court of Cook County
The Lambs Libertyville, IL 60048	4-29-80	$10,000.	Operational support
Latino Institute Chicago, IL 60604	3-11-82	$150,000.	Fund the first year of the Latino Resource Development Program
Lincoln Park Zoological Society Chicago, IL 60611	8-28-79 1-22-80 7-16-81 10-14-82	$25,000. $25,000. $25,000. $35,000.	General support
Local Initiatives Support Group New York, NY 10017	11-12-81	$1,000,000.	For establishment of a LISC - Chicago fund
Lyric Opera of Chicago Chicago, IL 60606	10-15-79 1-22-80 7-16-81 3-11-82	$25,000. $25,000. $50,000. $75,000.	Support of student ticket program

Recipient	Award Date	Amount	Purpose
Marcy-Newberry Association, Inc. Chicago, IL 60608	7-8-82	$25,000.	One year's support of the North Lawndale Community Youth and Adult Outreach Program
Modern Poetry Association Chicago, IL 60680	11-12-81 10-14-82	$20,000. $15,000.	General operating support
Mo Ming Dance and Art Center Chicago, IL 60657	11-12-81 10-14-82	$5,000. $15,000.	General operating support
The Morton Arboretum Lisle, IL 60532	10-15-79 1-22-80 7-16-81 10-14-82	$25,000. $25,000. $25,000. $10,000.	General support
Museum of Contemporary Art Chicago, IL 60611	7-16-81 10-14-82	$25,000. $35,000.	General operating support
Museum of Science & Industry Chicago, IL 60637	8-28-79 1-22-80 7-16-81 10-14-82	$10,000. $10,000. $30,000. $45,000.	Capital improvement
Music of the Baroque Chicago, IL 60637	12-18-80 11-12-81 10-14-82	$25,000. $35,000. $25,000.	Production support
The Neighborhood Institute Chicago, IL 60649	3-11-82	$50,000.	General operating support

Recipient	Award Date	Amount	Purpose
Pet Rescue, Inc. Bloomingdale, IL 60108	7-16-81	$10,000.	General operating support
Providence-St. Mel High School Chicago, IL 60624	4-29-80	$300,000.	Repairs/renovation
Ravinia Festival Association Chicago, IL 60603	8-28-79 1-22-80 7-16-81 10-14-82	$25,000. $25,000. $40,000. $15,000.	General support
Remains Theatre Chicago, IL 60657	11-12-81 10-14-82	$5,000. $5,000.	General operating support
Saint Mary's Hospital West Palm Beach, FL 33407	5-31-80	$500,000.	Renovation
Saint Nicholas Theater Chicago, IL 60657	12-18-80	$15,000.	Operating support
The Salvation Army Chicago, IL 60610	12-18-80	$135,000.	Operating deficit Booth Memorial Hosp.
Save-A-Pet Highland Park, IL 60035	12-18-80	$25,000.	General operating support
Shedd Aquarium Chicago, IL 60605	10-15-79 12-18-80 7-16-81 10-14-82	$25,000. $25,000. $20,000. $10,000.	General support

Recipient	Award Date	Amount	Purpose
The Newberry Library Chicago, IL 60610	10-15-79 1-22-80 7-16-81 10-14-82	$15,000. $15,000. $40,000. $45,000.	Endowment for the Library's Center for the History of the American Indian.
North Light Repertory Evanston, IL 60201	12-18-80 11-12-81 10-14-82	$15,000. $15,000. $15,000.	Production support
Nyack College Nyack, NY 10960	11-8-79	25,000.	General Support
The Orchestra of Illinois Association Chicago, IL	11-11-82	$15,000.	General operating support
Organic Theater Company Chicago, IL 60640	12-18-80 11-12-81 10-14-82	$15,000. $15,000. $15,000.	Operating support
PACT Chicago, IL 60602	3-11-82	$78,600.	Support development of a Professional Volunteer Service Program
Palm Beach Atlantic College West Palm Beach, FL 33401	5-15-79	$200,000.	Model program in values-oriented business education.
Palm Beach Blood Bank West Palm Beach, FL 33407	4-29-80	$25,000.	Construction
	5-15-81	$25,000.	General Support.

Recipient	Award Date	Amount	Purpose
The Steppenwolf Theater Chicago, IL 60657	12-18-80 11-12-81 10-14-82	$15,000. $15,000. $15,000.	Operating support
Tree House Animal Foundation Chicago, IL 60640	5-15-79	$50,000.	Purchase of an animal transport vehicle, a pet care symposium and expansion of the pet-owner telephone counselling service
Urban Gateways Chicago, IL 60606	11-25-80 7-16-81 10-14-82	$40,000. $40,000. $40,000.	Operating support
Victory Gardens Theater Chicago, IL 60613	7-16-81 10-14-82	$15,000. $15,000.	General operating support
The Virginia Frank Child Development, Center of the Jewish Family and Community Service Chicago, IL 60606	5-15-79	$100,000.	Special enhancement grant to be used at the discretion of Elizabeth Jacob, Director, towards expansion of services in the Northeast Rogers Park area
Wisdom Bridge Theater Chicago, IL 60626	12-18-80 11-12-81 10-14-82	$15,000. $15,000. $15,000.	Production support
The Woodlawn Organization Chicago, IL 60637	12-18-80	$50,000.	Operating support
WPBT 2 Miami, FL 33161	12-18-80 3-13-81	$20,000. $5,483.	Program Support

Recipient	Award Date	Amount	Purpose
WTTW/Channel 11 Chicago, IL 60625	8-28-79	$65,000.	General support
	1-22-80	$65,000.	
	7-16-81	$50,000.	
	3-11-82	$75,000.	
The YMCA of Metropolitan Chicago Chicago, IL 60603	3-11-82	$100,000.	Support the first year of the Communities United project

PRESIDENT'S DISCRETIONARY AWARDS

1979	$ 1,000.
1980	77,300.
1981	575,521.
1982	634,632.
	$1,288,453.

Recipient	Award Date	Amount	Purpose
Action for Children's Television Newtonville, MA 02160	3-11-82	$22,750.	Publication costs (design and production) of the ACT Cable Guidelines for franchising officials, cable operators, and citizens regarding cable television's potenial services to young audiences.
American Academy of Arts and Sciences Chicago, IL 60637	6-2-81	$24,600.	General support
American Council on Education Washington, DC 20036	7-6-82	$10,000.	For design, printing, mailing costs and public relations activity involved with distribution of the report of the Commission on Issues Development and Academic Leadership.
American Council on Education Washington, DC 20036	12-18-80	$5,000.	Assist in distributing a book -
American Institute for Character Education San Antonio, TX 78212	5-17-82	$15,000.	To support development work of the program in the Chicago public school system.
American Red Cross Alexandria, VA 22314	4-29-80	$5,000.	Disaster service
Aspen Institute for Humanistic Studies New York, NY 10022	12-18-80	$5,000.	Program Support
Aspen Institute for Humanistic Studies New York, NY 10022	10-28-81	$25,000.	Support of book revision by Waldemar Nielsen entitled The Big Foundation
Aspira, Inc. of Illinois Chicago, IL 60647	10-5-82	$17,500.	Support of "Study of Puerto Rican Dropouts from Chicago Public High Schools

Recipient	Award Date	Amount	Purpose
Association of Academic Health Centers, Inc. Washington, DC 20036	10-12-82	$9,600.	For a working conference to explore new concepts for regionalization of health center programs.
Association House of Chicago Chicago, IL 60647	9-2-81	$25,000.	Training program to prepare Hispanic young people for computer-related careers .
Board of Education City of Chicago chicago, IL 60601	6-22-81	$25,000.	Support of the salary expense of a coordinator for "Adopt-a-School Program"
	8-30-82	$19,000.	Support of salary expense of an intern from National Urban Fellows, Inc. to implement a parent and community involvement program for the Chicago Public Schools
Businessmen for the Public Interest, Inc. Chicago, IL 60602	8-19-81 9-10-81 1-5-82 2-9-82 3-30-82 7-8-82 10-14-82	$25,000. $50,000. $20,000. $4,000. $25,000. $72,500. -23,201.	Support of proposal "Chicago Cable TV Public Information Project"
Center for New Schools Chicago, IL 60605	4-14-81	$10,000.	Support of proposal entitled "Building on Cultural Strengths"
The Center for New Television Chicago, IL 60611	3-11-82	$25,000.	To support longterm organizational and financial planning.
University of Chicago Chicago, IL 60637	2-13-81	$37,564.	Three year research project "Talent and Achievement: A Longitudinal Study of Careers in Art"

Recipient	Award Date	Amount	Purpose
University of Chicago Chicago, IL 60637	5-12-82	$25,000.	Support of proposal entitled: "A Study of the Psychological Development of Martin Luther King, Jr.
University of Chicago Chicago, IL 60637	5-20-82 12-20-82	$1,500. -17.	Unrestricted use of the Center for Studies in Criminal Justice
Chicago Area Pre-College Engineering Program Chicago, IL 60606	8-3-82	$25,000.	Support of program activities
Chicago Chamber Orchestra Assoc. Chicago, IL 60604	7-20-81	$2,500.	Operating support
Chicago Conservatory College Chicago, IL 60605	8-14-80	5,000.	Operating support
Chicago Public Schools Student Science Fair, Inc. Chicago, IL 60606	1-26-82	$7,000.	Purchase of reference books for Chicago Public Shools Student Science Fair
Chicagoland Radio Information Services, Inc. Chicago, IL 60611	10-8-81	$20,000.	General operating support to assist in radio broadcasting programs for the blind and the handicapped.
Cinema/Chicago Chicago, IL 60610	8-17-81	$25,000.	General support
	11-3-82	$3,000.	General support
Citizens Committee for Victim Assistance Chicago, IL 60604	3-12-81	$5,000.	General support

Recipient	Award Date	Amount	Purpose
Donor's Forum of Chicago Chicago, IL 60604	4-29-80 4-27-81 12-1-81 8-25-82 10-6-82	$5,000. $5,000. $5,000. $5,000. $7,500.	General support
Executive Service Corps. of Chicago Chicago, IL 60604	11-15-81	$25,000.	Support to Chief Financial Officer - Chicago Board of Education
The Foundation Center New York, NY 10019	9-24-81 6-21-82	$25,000. $25,000.	General Support
The Grantsmanship Center Los Angeles, CA 90015	3-11-82	$2,000.	Support of programs to increase the managerial and planning capabilities of employees and directors of nonprofit organizations
Hampton Institute Hampton, VA 23668	11-9-82	$25,000.	Support of 5th Annual Conference on the Black Family
Harris Bank Foundation Citizens for Safety Vests Chicago, IL 60690	3-24-82	$25,000.	Challenge grant to purchase bullet resistant vests for Chicago Police Force
University of Illinois Chicago Circle Chicago, IL 60680	10-8-81	$24,438.	Support of project collecting, cataloging and publishing the papers of Jane Addams
University of Illinois Police Chicago, IL 60680	4-2-81	$2,500.	Support of "Officer Friendly Program"
Institute for Voluntary Organizations Chicago, IL 60604	5-12-82	$5,000.	Toward salary expense for additional staff member

Name	Award Date	Amount	Purpose
The International Council on the Future of the University New York, NY 10020	6-26-80	$5,000.	General support
Kuumba Community Theatre Chicago, IL 60616	11-04-80	$5,000.	Production support
Lakefront Gardens, Inc. Chicago, IL 60603	12-9-81	$15,322.	Payment of architect-engineering services in connection with Lakefront Gardens
Lake Paradise Regional Renewal, Inc. Mattoon, IL 61938	7-30-81	$25,000.	Support of project to dredge sediment from Lake Paradise
Landmarks Preservation Council of Illinois Chicago, IL 60605	5-4-82	$3,000.	Support of reception for the National Conference of State Historic Preservation Officers
The John D. MacArthur Park Conservation Corp., Inc. Chicago, IL 60603	7-16-81	$25,000.	General operating support in carrying out its duties of monitoring and enforcing the provisions of the Conservation Easement of the Park
Madonna College Livonia, MI 48150	3-18-82	$25,000.	Unrestricted Grant.
Massachusetts Institute of Technology 77 Massachusetts Ave. Cambridge, MA 02139	3-12-81	$7,000.	Support of the concert scheduled May 19, 1981 by the Experimental Music Studio.
Mental Health Association of Greater Chicago Chicago, IL 60605	10-18-82	$5,000.	Support of program entitled "Stress in Industry"

Recipient	Award Date	Amount	Purpose
Mercy Hospital & Medical Center Chicago, IL 60616	10-4-79	$1,000.	Defray expenses for the hospital's fund raising dinner for staff medical education.
Mexican American Legal Defense and Educational Fund Chicago, IL 60604	6-9-81	$15,600.	Support of MALDEF's community education outreach work.
Miami Geological Society, Inc. Coral Gables, FL 33114	5-24-82	$10,000.	For the reprinting of 500 copies of the book entitled "Environments of
Music of the Baroque Chicago, IL 60637	6-19-81	$3,700.	Production support
National Academy of Sciences Washington, DC 20418	6-24-82	$20,000.	For use by the Institute of Medicine of the National Academy of Sciences to study and report on the implications of current and projected governmental policies for research related to mental health, as well as the delivery of mental health service.
National Association of Down's Syndrome Oak Park, IL 60303	12-30-80	$5,000.	Operating support
National Committee for Prevention of Child Abuse Chicago, IL	12-1-82	$5,000.	General operating support
National Information Bureau New York, NY 10016	3-11-82	$2,000.	Support of current programs concerning auditing standards for nonprofit organizations and statistical representation of nonprofit acitivites in the United States.

Recipient	Award Date	Amount	Purpose
National Institute of Independent Colleges & Universities Washington, DC 20036	1-6-82	25,000.	In support of State I of proposal entitled " A Proposal to Create Higher Education Financial Forecasting System for Independent Colleges and Universities".
National Office on Disability Washington, DC 20005	5-5-82	$25,000.	For support in expanding the number of community partners in its program activities, as described in the report entitled, "The Unfinished Agenda".
Nature Conservancy Arlington, VA 22209	12-18-80	$17,300.	Environmental advisor for John D. MacArthur Beach State Park
North American Riding for the Handicapped Association, Inc. Ashburn, VA 22011	10-8-81	$15,000.	General support to assist in program promoting horseback riding as therapeutic recreation for the handicapped.
University of North Dakota Grand Forks, ND 58202	3-18-82	$25,000.	Support of a feasibility study regarding funding necessary to make energy conservation modifications in institutions of higher education as described in the proposal entitled "The Insurance Company Concept".
University of Notre Dame Notre Dame, IN 46556	12-18-80	$20,000.	Support of translation and publication of a scholarly edition of Jose Ortega y Gasset's "The Rebellion of the Masses, by Anthony Kerrigan.
University of Notre Dame Notre Dame, IN 46556	11-16-82	$25,000.	General support of the Special Nuclear Project

Recipient	Award Date	Amount	Purpose
North Shore Lekotek Evanston, IL 60201	2-18-81	$12,297.	Support of film project
The Playwrights' Center, Inc. Minneapolis, MN 55406	3-24-82	$15,000.	Support of the 1982 Midwest Playwrights' Program scheduled for August
Reading is Fundamental Chicago, IL 60602	7-22-81	$10,000.	Support of program activities
Research Foundation for Mental Hygiene, Inc. N. Y Psychiatric Institute New York, NY 10032	9-30-81	$25,000.	Program of research described in proposal entitled: "A Prospective Study of Children of Schizophrenic Parents"
Roosevelt University Chicago, IL 60605	9-29-82	$2,500.	Support of the University/Military Consortium for the Development of Drug Abuse Action Programs
Sangamon State University Springfield, IL	12-20-82	5,000.	Support project entitled "Eyewitness Illinois: Stories of the Governorship"
Southern Illinois University Carbondale, IL 62901	4-2-81	$25,000.	Purchase of the McCoy "Freedom of the Press" collection.
TRUST, Inc. Chicago, IL 60604	10-28-81 9-14-82	$5,000. $15,000.	General support
United Way of Champaign County Champaign, IL 61820	9-16-81	$5,000.	General operating support
The Urban Institute Washington, DC 20037	10-28-81	25,000.	Support of a major inquiry into the impact of government budget cuts and related changes on non-profit organizations.

Recipient	Award Date	Amount	Purpose
Westlake Community Hospital Melrose Park, IL 60153	7-14-82	$20,000.	Fund the creation and production of video tapes produced for cable TV on factors affecting human wellness and exploring the relationship between and among wellness factors
WBEZ Chicago, IL 60601	1-27-82	$24,000.	To preserve the broadcasts of the program, About Books and Writers with Robert Cromie
Yale University New Haven, CT 06520	3-11-82	$10,000.	Toward development of administrative and planning capabilities within the Program on Non-Profit Organizations.

OTHER

1980	$23,184,912.
1981	18,251,251
1982	21,381,377.
	$62,817,540.

Recipient	Award Date	Amount	Purpose
Bard College Annandale-on-Hudson, NY 12504	12-17-81	$300,000.	Establishment of a John D. MacArthur Professorship
Bennington College Bennington, VT 05201	9-10-81	$300,000.	Establishment of a John D. MacArthur Chair
Bucknell University Lewisburg, PA 17837	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship.
University of California, Berkeley Berkeley, CA 94720	9-10-81	$1,200,000.	Establishment of a John D. MacArthur Chair
California Institute of Technology Pasadena, CA 91125	9-10-81	$1,200,000.	Establishment of a John D. MacArthur Chair
University of Cambridge Cambridge, England	4-29-80	$22,500.	Research support
University of Chicago Chicago, IL 60637	9-10-81	$1,200,000.	Establishment of a John D. MacArthur Chair
Claremont College Claremont, CA 91711	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship
Colby College Waterville, ME 04901	9-10-81	$300,000.	Establishment of John D. MacArthur Professorship.
Colgate University Hamilton, NY 13346	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship
Colorado College Colorado Springs, CO 80903	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship.

Recipient	Award Date	Amount	Purpose
Connecticut College New London, CT 06320	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship.
Davidson College Davidson, NC 28036	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship.
The State of Florida John D. MaCArthur Beach State Park	12-19-80	$22,103,800.	Establishment of John D. MacArthur Beach Staate Park - Unimproved property on the ocean.
Department of Natural Resources, State of Florida	12-9-82	$250,000.	To assist in preparing detailed design drawings and specifications for development of first phase of the John D. MacArthur Beach State Park.
Hampshire College Amherst, MA 01002	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship.
Harper's Magazine New York, NY 10016	1980 1981 1982	$1,058,612. $2,201,231. $462,961.	Program related investment in Literary Excellence.
Harper's Magazine Foundation New York, NY 10016	2-1-82	$3,116,099. $2,552,317.	Harper's Magazine funds for us in Literary Excellence and Award of Harper's Magazine
Harvard University Cambridge, MA 02138	9-10-81	$1,200,000.	Establishment of a John D. MacArthur Chair.

Recipient	Award Date	Amount	Purpose
University of Illinois Urbana, IL 61801	9-10-81	$1,200,000.	Establishment of a John D. MacArthur Chair
Institute for World Environment and Resource Studies, Inc. Washington, DC 20036	5-14-82	$15,000,000.	Support Institute's sponsorship of research reports, seminars and like activity in the area of World Environment and Resource Studies.
Kalamazoo College Kalamazoo, MI 49007	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship.
Kenyon College Gambier, OH 43022	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship
Massachusetts Institute of Technology Cambridge, MA 02139	9-10-81	$1,200,000.	Establishment of a John D. MacArthur Chair.
The University of Michigan Ann Arbor, MI 48109	9-10-81	$1,200,000.	Establishment of a John D. MacArthur Chair.
New College of the University of South Florida Sarasota, FL 33580	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship.
Northwestern University Evanston, IL 60201	9-10-81	$1,200,000.	Establishment of a John D. MacArthur Chair

Recipient	Award Date	Amount	Purpose
Occidental College Los Angeles, CA 80041	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship
Reed College 3203 S. E. Woodstock Blvd. Portland, OR 97202	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship.
Union College Schenectady, NY 12308	9-10-81	$300,000.	Establishment of a John D.MacArthur Professorship
University of the South Sewanee, TN 37375	9-10-81	$300,000.	Establishment of a John D. MacArthur Professorship
University of Wisconsin Madison, WI 53706	9-10-81	$1,200,000.	Establishment of a John D. MacArthur Chair
Justice Program	1981	$150,000.	Authorized but unallocated grant

Chairman RANGEL. Dr. Mawby.

STATEMENT OF RUSSELL G. MAWBY, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, W. K. KELLOGG FOUNDATION, ACCOMPANIED BY JAMES W. RIDDELL, COUNSEL

Mr. MAWBY. Thank you, Mr. Chairman and members of the subcommittee.

I want to thank Congressman Wolpe for being here earlier and for his generous introduction. Thank you for your review of TRA 69 and this opportunity to endorse H.R. 3043 introduced by Congressmen Conable and Shannon.

I am here to urge repeal of section 4943 which requires divestiture of what the law calls excess business holdings.

The W. K. Kellogg Foundation is a general purpose grant-making foundation headquartered in Battle Creek, Mich.

It is administered by nine trustees of which I am one, and the foundation is the sole beneficiary of the W. K. Kellogg Foundation Trust.

The trust was created in 1935 by W. K. Kellogg, founder of the Kellogg Co. The trust is administered by four trustees, Charles Ludlow, who is vice president and treasurer of the Upjohn Co. in Kalamazoo; Paul Smucker, chairman and chief executive officer of the J. M. Smucker Co. of Orville, Ohio, and myself, and the corporate trustee is the Harris Bank and Trust Co. of Chicago.

Mr. Kellogg's fortune was the company he created. He put into trust for public benefit his share of that company and thus the trust owns 47 percent of the common stock of the Kellogg Co.

The only relationship of the trust to the company is that of shareholder. There are no dealings between the trust and the company except that the trust receives dividends on the shares it holds.

The company is a diversified food processing company and has 22,000 shareholders and its stock is traded on the New York Stock Exchange.

The company pays all Federal, State and local taxes. In 1982 the effective tax rate for the company was 44.6 percent.

Mr. Smucker and I serve on the board of directors of the Kellogg Co. We do not manage it. There are no members of the Kellogg family involved in the foundation, the trust, or the company.

I am appearing here as a trustee. We, as trustees of the trust, are confronted with a limitation on the exercise of our best judgment in the management of the trust's assets because, under the law, we will be forced to sell a substantial portion or all of an asset that has performed superbly for charity.

To summarize the importance of this issue to our beneficiaries, I will use two charts which illustrate the performance of the trust.

The first displays the growth in assets since the time of gift in 1935.

Mr. Kellogg gave assets worth $45 million at that time. Had those assets been put in Government bonds, today they would be worth $18 million.

Had we put it in a balanced portfolio of stocks and bonds, it today would be worth $214 million.

Had we put it in an all-stock fund, it would today be worth $410 million.

Actually, the trust now has $994 million working for charity.

More importantly, from the standpoint of our beneficiaries, of course, is what does this mean in income?

This is based on 1982 yields. A Government portfolio of that size would produce $2 million; a balanced portfolio, $12.2 million; common stocks, $22.6 million, and actually, the trust fund produced $53.3 million for charity.

There is another example to illustrate this point of divestiture. Mr. Kellogg gave away most of his fortune, but when he died in 1951, he left 384,000 shares of Kellogg stock to the foundation.

The trustees decided to diversify that and sold it for $8.5 million.

It has been in a diversified portfolio performing reasonably well through the years. Aggregate earnings on that investment have been $15.2 million; the current value, $14.1 million.

Had they kept those 384,000 shares of Kellogg, today the aggregate earnings would have been $91.6 million; the current value $169.3 million.

So, to the question, would charity have been better served by diversification? Obviously not!

In summary, it is our conviction that portfolio management decisions should be based on investment judgment. The trustees of all other charities have authority to exercise their judgment. The trustees of private foundations are the only trustees of charity with restrictions.

We think the public interest is well protected by other provisions of the law. We feel that the birth rate of private foundations would be encouraged, and that the public charitable interests would be better serviced by permitting trustees to exercise their best judgment in managing portfolios to maximize resources for their grant making.

Therefore, Mr. Chairman, and members of the committee, we are urging repeal of section 4932.

Thank you.

[The prepared statement follows:]

STATEMENT OF RUSSELL G. MAWBY, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, W. K. KELLOGG FOUNDATION

INTRODUCTION

This statement is submitted by the W. K. Kellogg Foundation of Battle Creek, Michigan, in support of H.R. 3043 and for the purpose of suggesting an amendment to the bill which would repeal Section 4943 of the Internal Revenue Code relating to so-called excess business holdings.

My name is Russell G. Mawby, Chairman of the Board and Chief Executive Officer of the W. K. Kellogg Foundation. I am accompanied by Dick Riddell, a partner in the firm of Riddell, Fox, Holroyd & Jackson, P.C.

The Kellogg Foundation is particularly grateful to you, Mr. Chairman, and the members of the Subcommittee for providing an opportunity for the first comprehensive examination of the Foundation Tax Act since its enactment in 1969. We would also like to express our gratitude to Congressmen Conable and Shannon for introducing H.R. 3043 and we urge its enactment.

Most of the witnesses who have appeared and will appear before you will focus their attention on the specific provisions of that bill. For that reason, I would like to devote such time as allowed to us to the examination of the provisions of Section 4943 of the Internal Revenue Code, the so-called excess business holdings section, which came out of the Foundation Tax Act of 1969 and was enacted as a part of the Tax Reduction Tax of that year.

Before becoming specific concerning the operations of that section on the Kellogg Foundation and the Kellogg Foundation Trust, some background on the excess business holdings provision, its impact on private foundations, and the reasons for enacting the provision are in order.

A REVIEW OF EXCESS BUSINESS HOLDINGS PROVISIONS (IRS SECTION 4943) AND THEIR IMPACT ON PRIVATE FOUNDATIONS

The excess business holdings provisions (Section 4943) of the 1969 Tax Act restrict the percentage amount of a single corporate stock which may be owned by a private foundation and its "disqualified persons." [1]

These provisions should be repealed by Congress for a number of reasons:

(1) Fourteen years of experience have shown that the excess business holdings provisions are now unnecessary because of the other provisions of tax and trust law.

(2) The provisions have contributed to the dramatic decline in the creation of new foundations since 1969.

(3) The excess business holdings provisions represent an unreasonable and unwarranted restriction on the investment decisions of foundation trustees and managers.

(4) The provisions threaten the future grantmaking capacity and the value of assets of a number of foundations nationwide, including the W. K. Kellogg Foundation.

I. Excess business holding problems before the Foundation Tax Act of 1969

In 1965, the United States Department of the Treasury reported that a number of foundations (109 of 1,300 private foundations surveyed) owned 20 percent or more of a business enterprise. The Treasury Report provided examples of how, in a limited number of cases, such ownership had resulted in related abuse by foundations. It expressed anxiety over the potential for further abuses of three general types. They were: competitive advantage, distribution of earnings, and management of business enterprise.

Competitive advantage.—Treasury alleged that a few business owners had manipulated the purpose of a foundation by using tax-free dollars to further business activities in ways considered unfair to competitors. Corporate taxes were avoided by paying pre-tax profits to a foundation (tax-exempt); using pre-tax donations to a foundation to help capitalize or expand a business; or by using tax-free foundation investment income to supply capital to a business. This represented unfair competitive advantage, since businesses not owned by foundations rely on after-tax dollars for capital.

Distribution of earnings.—There were alleged instances of foundation-owned enterprises delaying distribution of profits to the parent organizations. This allowed profits to be reinvested in business modernization without tax liability, and in turn delayed benefits to charity through foundation grantmaking.

Management of business enterprise.—The Treasury Report said there were instances where a foundation became involved in business activities to the point that the charitable pursuits of the foundation were "submerged" by pressures and demands of the commercial enterprise.

II. Description of the Foundation Tax Act of 1969: excess business holdings provisions

Under Section 4943 of the Foundation Tax of 1969, the Federal Government adopted new restrictions on foundations which prohibited "excess" business holdings, with the intent of forestalling the types of foundation/business interactions of concern to the Treasury Department. Excess holdings that existed before 1969 were treated differently from those acquired afterward.

Holdings acquired after 1969.—For holdings acquired after 1969, the foundation—in conjunction with all "disqualified" persons (essentially the founder, foundation managers and their lineal descendants)—may not in most instances hold more than 20 percent of the voting stock in the business enterprise. Stock owned above the permitted limits must be sold within five years.

Holdings acquired before 1969.—The rules for pre-1969 holdings are relatively complex, with each foundation provided two time periods, or phases, for divestiture. The rules, as they apply to the Kellogg Foundation, are:

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[1] "Disqualified persons" are essentially the founder, foundation managers, their lineal descendants and spouses.

Phase 1.—In a formula based on percent of stock ownership in 1969, a foundation must have reduced its percentage of ownership to 50 percent or less (including that owned by disqualified persons). Foundations were given from 10 years to 20 years to reach the 50 percent level.

Phase 2.—The length of time for Phase 2 is 15 years for all foundations regardless of their holdings. At the end of Phase 2, the foundation must have reduced its holdings to 35 percent, or less.

III. Why the excess business holdings provisions are not needed

By enacting Section 4943 of the Foundation Tax Act of 1969 Congress limited the amount of a single corporate stock or corporate ownership which could be held by a private foundation. However, the abuse relative to foundation ownership of stock, as cited in the 1965 Treasury Report, and in the 1969 Congressional hearings, included only a few, if well publicized, examples.[2] The 1965 Treasury Department Report emphasized that "(our) investigation had indicated that most private foundations act responsibly and contribute significantly to the improvement of society." In light of the limited number of cited abuses, Section 4943 has proven to be a heavy handed response; punishment of the many for the sins of the few.

The types of abuses with which Congress was rightfully concerned were addressed forcefully in the 1969 Tax Act not only by the Section 4943 provisions relating to excess business holdings, but also by the other sections providing a penalty tax on jeopardizing investments, prohibiting self-dealing, setting a minimum distribution requirement for foundations, and by a myriad of other foundation requirements. The Kellogg Foundation strongly supports these oversight provisions and their strict enforcement by the Internal Revenue Service. However, all of these provisions in the 1969 Tax Act, as well as the foundation oversight under general trust law, also represent a strong case for now revising what John Nason,[3] author of "Trustees and the Future of Foundations," recently labeled "the unnecessary regulations on excess business holdings."

This revision can be made because:

(1) The excess business holdings provisions as currently written are no longer required to stop abuse due to the other oversight provisions;

(2) Because the excess business holdings provisions appear to be one of the major disincentives to the creation of new foundations;

(3) Because the provisions represent an unreasonable restriction on the investment responsibilities and rights of foundation trustees and managers; and

(4) Because the provisions threaten the future grantmaking capability of foundations.

1. The provisions are not required to stop abuse

The three primary areas of limited abuse reported by the Treasury Department in 1965 are today adequately safeguarded by other laws.

Competitive advantage.—Examples of unfair competitive advantage have disappeared since the 1969 Act. Yet many foundations still have excess holdings. In short, provisions of the law—notably rules against self-dealing and jeopardy investments—have eliminated the abuses.

Distribution of earnings.—The problem of some foundations making small payouts to charity has been eliminated by the congressionally-mandated payout requirement for private foundations—five percent of market value of assets must be distributed annually.

Management of business enterprise.—As noted earlier, problems of jeopardy investments and self dealing have been effectively eliminated by other provisions of the 1969 Tax Act. In addition, both trust law and oversight regulations of the Securities and Exchange Commission for publicly-traded stock provide additional safeguards regarding fiduciary rights and responsibilities of foundation and corporate board members.

2. The provisions are a barrier to creation of new foundations

Since 1969, many potential donors with family business interests have decided not to create foundations. There have been a number of reasons, including differential treatment of gifts to public charities as opposed to foundations, and changes in the general economy. The excess business holdings provisions have also been one of the major deterrents.

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[2] The abuse most often cited during the 1969 hearings related to the James Irvine Foundation of San Francisco, which owned 53 percent of the Irvine Company. The Company in turn owned 88,000 acres in suburban Los Angeles. The land was allegedly valued by the Company at $1 billion. However, the Foundation carried its Irvine Company stock at a value of $2.

[3] Dec. 7, 1982, speech before members of the Minnesota Council on Foundations.

The impact of these provisions is understandable in light of the history of foundations in America. According to the 1970 Peterson Commission, the creation of foundations—and particularly America's larger ones—usually has been in the form of blocks of stock controlling a business which the donor developed during his lifetime. Data compiled by the Commission indicated that over half of all gifts to large foundations were in the form of control stock. And Section 4943 of the 1969 Tax Act has been directed precisely at discouraging the contributions of this type of asset. This impact seems to be borne out in the decline in creation of new foundations nationally since the excess business holdings provisions went into effect in 1969. In the decade from 1970–79, only 258 new large foundations were established (that is, with assets greater than $1 million or grants of more than $100,000 per year). Only two of those had assets greater than $100 million. This contrasts with the creation of 1,261 new large foundations from 1950–59 and 756 from 1960–69.

3. The provisions represent an unwarranted and unreasonable restriction on investment rights and responsibilities of foundation trustees and managers

Only private foundations—among the nation's multitude of philanthropic organizations—are restricted as to the type of assets which they may have in their portfolios and use to generate maximum income for charitable activities. The argument is not that all foundations should have assets concentrated in a particular form of investment. For many, a diversified portfolio represents the best return for charitable purposes. For others, however, assets retained in the form of one corporate stock have proven to be outstanding sources of income for charity. Foundation trustees and managers should thus have the same right and responsibility—as do the trustees of all other charities in the United States—of making sound investment decisions based on the best interests of charitable purposes and not based on the dictates of government. Eliminating Section 4943 of the Internal Revenue Code (excess business holdings provisions) will provide such equality of investment options to foundations.

4. The excess business holdings provisions may result in significant loss of foundation assets and grantmaking capability

The excess business holdings rules are too complex, inflexible and difficult to work with, and they have severe, totally unanticipated consequences for existing foundations and corporations. The major pre-1969 foundations with excess business holdings still have a number of years to reach permitted divestiture levels. There likely will be increased problems, particularly with business takeovers and mergers as the foundations divest. Knowledge that a foundation is forced to divest a major block of stock within a specified period is also likely to depress the price, and aid in outside merger or takeover attempts of a related business. Forced divestiture under these circumstances, or because of a generally depressed economy, is difficult, expensive, and may result in significant loss of foundation assets. That translates into a loss of funds for charitable purposes.

THE POTENTIAL IMPACT OF SECTION 4943 ON THE W. K. KELLOGG FOUNDATION AND THE W. K. KELLOGG FOUNDATION TRUST

In 1930, Mr. Kellogg transferred the bulk of his fortune, consisting of stock in the Kellogg Company, to the W. K. Kellogg Foundation Trust No. 5315. At the same time, he established the W. K. Kellogg Foundation. Both the Foundation and the Trust No. 5315 are categorized as private foundations under the 1969 Act. The major asset of the Trust today is approximately 47 percent of the stock of The Kellogg Company having a current market value of $994 million. The Foundation is the designated sole beneficiary of the Trust's income. The Foundation holds assets in its own right. These assets consist of a balanced portfolio having a current market value of approximately $60.4 million.

The Trust is administered by four trustees, three individuals and one corporate trustee. They are Charles H. Ludlow, Vice President & Treasurer of The Upjohn Company, Kalamazoo, Michigan; Paul H. Smucker, Chairman of the J. M. Smucker Company, Orrville, Ohio; myself, and the Harris Bank and Trust Company of Chicago, Illinois.

The Foundation's affairs are administered by a Board of Trustees consisting of nine members, including myself. They are:

A. H. Aymond, Esquire, Former Chairman, Consumers Power Company, Jackson, Michigan;

Robert D. Sparks, President & Chief Programming Officer, W. K. Kellogg Foundation, Battle Creek, Michigan;

Dorothy A. Johnson, Executive Director, Council of Michigan Foundations and Civic Leader, Grand Haven, Michigan;

William N. Hubbard, Jr., President, The Upjohn Company, Kalamazoo, Michigan;

Durward B. Varner, Past President, University of Nebraska, Currently President, University of Nebraska Foundation, Lincoln, Nebraska;

Jonathan T. Walton, Executive Vice President, National Bank of Detroit, Detroit, Michigan;

Howard F. Sims, President, Sims-Varner Associates (Architects), Detroit, Michigan;

Fred Sherriff, President, Sherriff-Goslin Company (Roofing Contractors), Battle Creek, Michigan.

Therefore, I am the only trustee that the Trust and the Foundation have in common. Two of the trustees of the Trust sit on the Board of the Kellogg Company. They are Paul Smucker and myself. Each of us who serve as trustees, whether for the Trust or for the Foundation, are dedicated to and aware of our obligations, including those imposed by law, to well and faithfully serve the public and the purpose for which the Trust and the Foundation were established. We strive constantly to exercise our best judgment as trustees for the benefit of the public and to carry out our duties as trustees with a complete awareness of the standards of conduct imposed by the law and the governing instruments under which we operate.

It is the collective belief of the Trustees of the Trust and the Foundation that Section 4943 ought to be repealed. It is our collective belief that the provisions of the law deprive us of an opportunity to exercise our judgment as trustees and to maximize and conserve the assets and income of the two entities for the benefit of charity. There can be no other reason for our existence except to benefit charity. To document the concern of the Trustees, an examination of the performance of the assets of both the Trust and the Foundation is in order.

COMPARISON OF MARKET AND INCOME APPRECIATION OF W. K. KELLOGG FOUNDATION TRUST WITH DIVERSIFIED PORTFOLIOS

Through the years (since 1935), the Foundation has carefully compared the income and market appreciation of the W. K. Kellogg Foundation Trust with various other types of investments. In the updated study which follows, the Trust's 1982 distribution to charity was 136 percent more than possible from a diversified common stock portfolio, 334 percent more than from a 50 percent stock/50 percent bond (balanced) portfolio and 2,553 percent more than would have been possible from a fund comprised of government bonds. The figures are as follows:

Type of fund	Value of fund	1982 over 1935 market appreciation (percent)	Income	Percent Kellogg income over other investments
W. K. Kellogg Foundation Trust	$994,000,700	2,109	$53,314,583	
Common stock funds	410,445,000	811	22,574,475	136
Balanced portfolio	214,358,000	376	12,292,088	334
Government bond fund	18,270,000	(41)	2,009,700	2,553

The Trust's policy over the years has been to expend all of its income each year for charitable purposes and society has benefited from the increasing benefactions as illustrated by the following:

W. K. KELLOGG FOUNDATION [1] REVENUES AND EXPENDITURES, 1930–82

Year	Revenues	Percent increase over previous year	Charitable expenditures	Percent increase over previous year
1982	$57,207,653	7.7	$57,238,941	7.7
1981	53,115,851	4.8	53,155,723	4.9

W. K. KELLOGG FOUNDATION [1] REVENUES AND EXPENDITURES, 1930-82—Continued

Year	Revenues	Percent increase over previous year	Charitable expenditures	Percent increase over previous year
1980	50,665,276	9.6	50,673,109	9.6
1979	46,229,999	5.3	46,250,449	5.3
1978	43,915,120	9.2	43,931,833	9.2
1977	40,217,497	21.5	40,239,061	21.4
1976	33,110,977	36.3	33,133,685	36.3
1975	24,300,222	10.9	24,315,728	10.9
1974	21,906,764	3.8	21,920,698	3.8
1973	21,102,881	8.5	21,118,343	7.8
1972	19,442,522	(.2)	19,597,208	.5
1971	19,473,642	15.3	19,497,457	15.3
1970	16,891,099	3.0	16,912,009	.72
1969	16,393,446	15.1	16,791,521	17.58
1968	14,237,410	7.6	14,280,417	6.93
1967	13,226,537	4.2	13,355,359	4.16
1966	12,698,961		12,822,196	
1930 to 1965	137,680,385		137,809,892	
Totals	641,816,242		643,043,629	

[1] Most of the figures in this statement relate to the trust only. However, some figures (as is the case with this table) are combined figures representing revenues and expenditures of both the trust and the foundation.

From the original gifts from the founder of $45 million, which had a market value of $994 million at August 31, 1982, distributions to charity totals $569 million. Income from the continued holding of Kellogg stock was 268 percent more than in 1969 compared with an increase of only 109 percent from our own diversified portfolio.

The figures are as follows:

Year ended August 31	W. K. Kellogg Foundation Trust		W. K. Kellogg Foundation diversified portfolio	
	Gross income [1] from Kellogg stock	Percent increase over 1969	Gross income	Percent increase over 1969
1982	53,314,583	268	3,830,889	109
1981	49,885,442	245	3,282,902	79
1980	47,726,554	229	2,929,636	60
1979	44,490,470	207	2,723,525	48
1978	42,507,364	194	2,411,807	32
1977	38,889,716	169	2,270,829	24
1976	31,654,420	119	2,295,754	25
1975	22,610,300	56	2,249,664	23
1974	20,264,858	40	2,229,290	22
1973	19,538,609	35	2,090,946	14
1972	18,090,810	25	1,941,018	6
1971	17,636,034	22	1,711,651	(6)
1970	14,922,798	3	1,831,344	(.2)
1969	14,470,592		1,834,420	

[1] Kellogg Foundation administrative expenditures have averaged 6 percent of gross income—one of the lowest of all major U.S. foundations.

Would a diversified portfolio have produced a greater return to charity?

No!

The return obtained on the Kellogg Foundation Trust assets has exceeded the return available from most other types of investments. Because of the holding of Kellogg Company common stock by the W. K. Kellogg Foundation Trust, the Trust's market value since inception has appreciated over twenty-two times and in a manner quite unlike what the appreciation would have been had assets been in a common stock portfolio, a balanced portfolio, or in a government bond account. As noted earlier, the Trust's distributions to charity were 136 percent more than would

have been possible with income from a common stock diversified fund, 334 percent more than they would have been from a balanced portfolio, and 2,553 percent more than would have been possible from a fund comprised exclusively of government bonds.

In addition to the Kellogg stock holdings in the Kellogg Foundation Trust, the Foundation has a separate diversified portfolio which has performed better throughout the years than similar portfolios and accepted market indices. Income in 1982 from the continued holdings of Kellogg stock in the Foundation Trust was 268 percent greater than in 1969 compared with an increase of 109 percent from our own diversified portfolio. This favorable comparison continues in 1983. In spite of the fluctuations experienced by portfolios of mutual funds, pension funds, and endowments of educational institutions, the return to charity from our investment in Kellogg continues to increase, as evidenced by the fact that our gross income from Kellogg stock in the present fiscal year is 125 percent greater than just 10 years ago—having risen each year; and the market value of our holding of Kellogg stock at August 31, 1982 was 171 percent greater than at August 31, 1969.

The return to charity from the investment in Kellogg continues to increase as reflected in the following table showing that gross income from Kellogg Stock in the fiscal year just completed was 195 percent greater than 10 years ago—having risen steadily each year.

August 31	W. K. Kellogg Foundation Trust gross income from Kellogg stock	Market value of Kellogg stock, August 31
1982	$53,314,583	$994,000,700
1981	49,885,442	695,800,490
1980	47,726,554	718,411,290
1979	44,490,470	745,727,400
1978	42,507,364	782,316,380
1977	38,889,716	881,801,700
1976	31,654,420	917,978,180
1975	22,610,300	705,441,360
1974	20,264,858	406,985,400
1973	19,538,609	529,081,020
1972	18,090,810	440,900,850
1971	17,636,034	443,161,880
1970	14,922,798	354,981,710
1969	14,470,592	366,286,860
1968	12,209,562	388,897,160
1967	11,305,150	352,720,680
1966	10,852,944	302,978,020

What is the objective in continuing to hold Kellogg stock?

The Trustees of the W. K. Kellogg Foundation Trust and the Trustees and officers of the W. K. Kellogg Foundation sense a deep obligation to society to maximize the annual return to charity from the assets left to both the Trust and the Foundation by Mr. Kellogg. Each year the question as to the desirability of retaining Kellogg stock is reviewed in depth. These studies have shown that no amount of diversification would have produced as great a return to charity as the benefits charity has derived from the Trust's continued holdings of Kellogg stock. The decisions derived from these studies are again reviewed at least semi-annually.

When a private foundation holds an asset which has provided a continuously-increasing return to charity of a magnitude such as the charitable expenditures from Kellogg stock, we feel the public interest is not well served by federal legislation which denies the trustees of that foundation the option of retaining that productive investment.

ACTUAL RESULTS OF DIVESTITURE FROM KELLOGG STOCK INTO A DIVERSIFIED PORTFOLIO

An actual experience in selling Kellogg stock for diversification purposes has dramatically illustrated to the Trustees of the W. K. Kellogg Foundation Trust the wisdom of desisting in further diversifications. To secure a greater diversification of the Foundation's investment assets, 384,860 shares of Kellogg Company common stock were sold in January of 1952. Net proceeds of $8,514,324 from the sale were reinvested in a diversification of securities in the Foundation's own well-managed portfolio. The $8,514,324 so reinvested in 1952 actually grew to $14,073,481 as of August 31, 1982 as a part of the Foundation's diversified portfolio and actually earned $15,205,693 in dividend and interest income during those years.

Had the Kellogg Company stock been retained, stock splits over the years would have increased the 384,860 shares to 6,157,760 shares by August 31, 1982, and the Kellogg stock would have had a market value on that date of $169,338,400. Earning during the period would have been $91,619,772 from Kellogg Company dividends. Thus, had the Kellogg stock not been sold, earnings available for charitable purposes would have been $77,546,291 greater, or 551 percent more, than were actually available from the reinvestment of those 384,860 shares in a diversified portfolio.

Example of actual divestiture of Kellogg stock

1952—Foundation sold 384,860 shares of Kellogg Common Stock for $8,514,324.
1952–82.—$8,514.324, Put in Diversified Portfolio:
  Aggregate earnings in dividends and interests, $15,205,693;
  1982 net worth, $14,073,481.
If Foundation Had Retained Same 384,860 Shares of Kellogg Stock—1952–82:
  Aggregate earnings for charitable purposes would have been, $91,619,772;
  1982 net worth would have been, $169,338,400.

Kellogg Stock earnings for charitable purposes would have been $77,546,291 greater (551 percent) than from the Diversified Portfolio Plus Asset Growth as shown above.

FUTURE EXPECTATIONS FROM HOLDING 47 PERCENT OF THE KELLOGG COMPANY STOCK

A recent study undertaken on behalf of the Trustees of the Foundation and the Trust overwhelmingly supports a continued holding of the Trust's principal asset. The study indicates that the Foundation can expect to distribute to charity approximately $841 million from income of the Kellogg stock over the next ten years. This is to be contrasted with approximately $58.5 million which the Foundation can expect to distribute from its diversified portfolio for the same period of time.

RETURN TO CHARITY FROM W. K. KELLOGG FOUNDATION TRUST AND THE W. K. KELLOGG FOUNDATION 1930–83 AND FUTURE PROJECTIONS

	Trust 5315	W. K. Kellogg Foundation	Combined
Future projection:			
1983–84	$60,901,764	$4,657,253	$65,559,017
1984–85	65,166,694	4,890,116	70,056,810
1985–86	69,720,773	5,134,621	74,855,394
1986–87	74,600,143	5,391,352	79,991,495
1987–88	79,840,947	5,660,920	85,501,867
1988–89	85,407,043	5,943,966	91,351,009
1989–90	91,370,717	6,241,164	97,611,881
1990–91	97,804,257	6,553,222	104,357,479
1991–92	104,635,375	6,880,883	111,516,258
1992–93	111,972,501	7,224,928	119,197,429
1983–93	841,420,214	58,578,425	899,998,639

THE RELATIONSHIP BETWEEN THE KELLOGG COMPANY, THE KELLOGG FOUNDATION AND THE KELLOGG TRUST

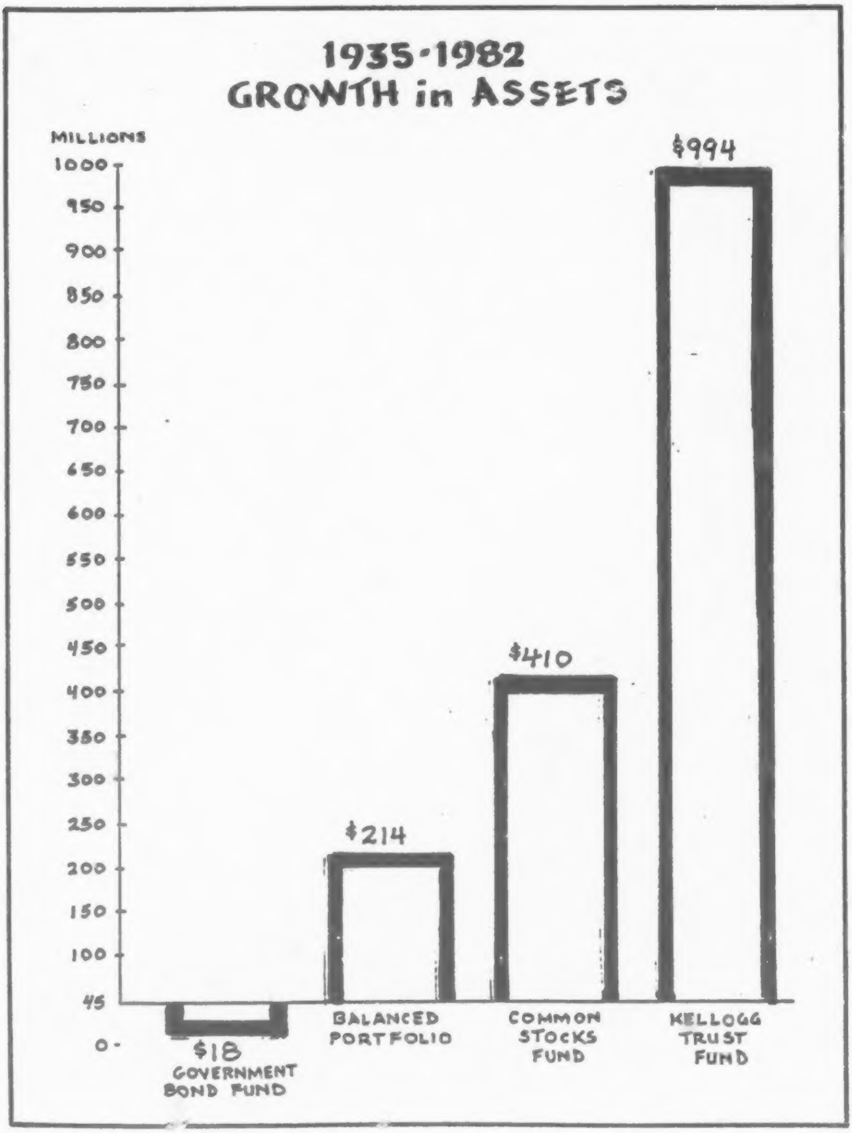
The Kellogg Company is a diversified food processing and manufacturing company. It has approximately 22,000 stockholders. Its stock is listed and sold on the New York Stock Exchange. It pays all Federal, state and local taxes levied throughout the United States and all taxes levied throughout the world wherever it does business. The Company has always paid at or very near the maximum Federal rate. In its last taxable year its effective rate of taxation was 44.6 percent.

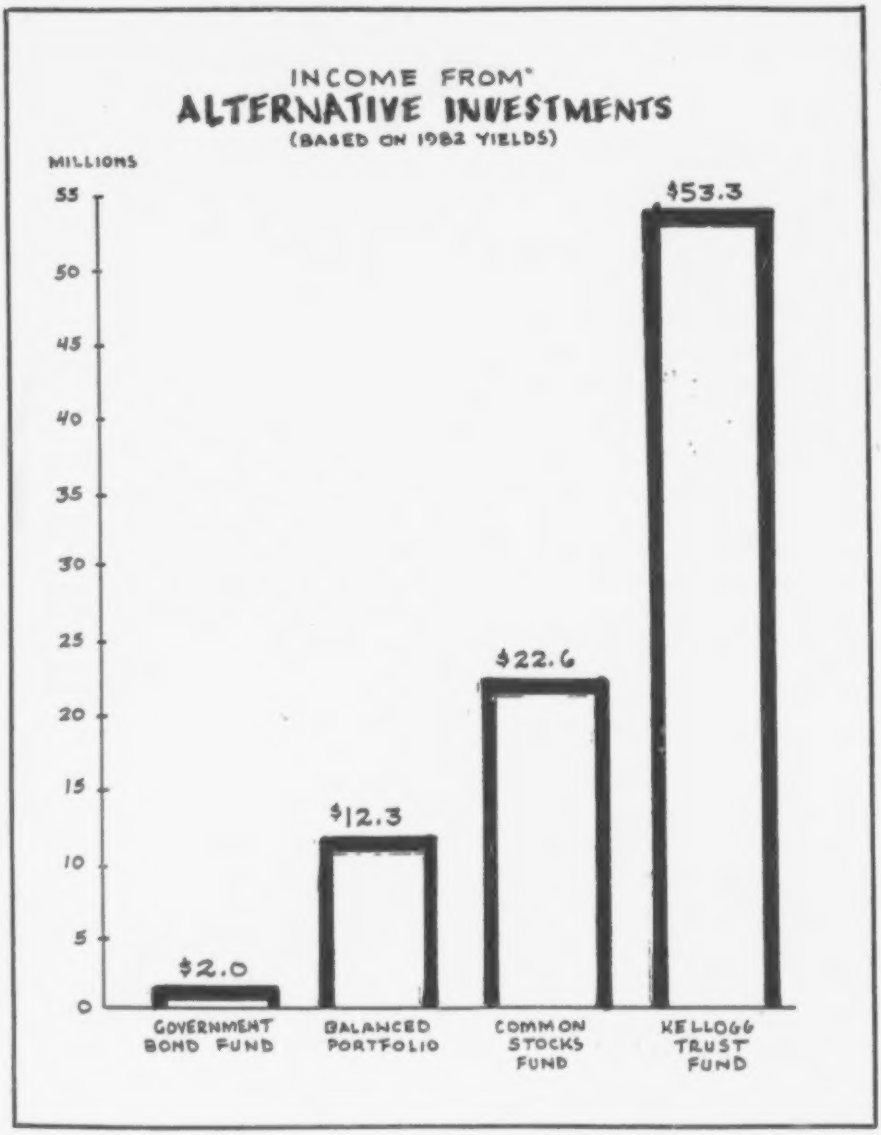
There are no dealings of any kind between the Company and either the Foundation or the Trust. The only transaction occurring by or between them is the payment to and receipt of the dividends derived from the Kellogg Company stock by the Trust. Since the Trust owns 47 percent of the stock, 47 percent of all dividends flow to the Trust and from the Trust to the Foundation for disbursement to charity. As shown above, the Trust always disburses 100 percent of its receipts into the Foundation and the Foundation has disbursed these funds for charitable purposes.

Accordingly, the Kellogg company is unique in one fashion. Its contribution to the public not only consists of its full share of Federal, state and local taxes, but, in addition, 47 percent of any distributions made by the Company are also distributed for the public benefit.

THE BOTTOM LINE

The problem posed for the Trustees of the Trust and the Foundation, and the attendant dilemma flowing therefrom is vividly set forth by the following two charts:


1935-1982
GROWTH in ASSETS
MILLIONS
1000
950
900
850
800
750
700
650
600
550
500
450
400
350
300
250
200
150
100
45
0
$18
GOVERNMENT BOND FUND
$214
BALANCED PORTFOLIO
$410
COMMON STOCKS FUND
$994
KELLOGG TRUST FUND


INCOME FROM
ALTERNATIVE INVESTMENTS
(BASED ON 1982 YIELDS)
MILLIONS
55
50
45
40
35
30
25
20
15
10
5
0
$2.0
$12.3
$22.6
$53.3
GOVERNMENT BOND FUND
BALANCED PORTFOLIO
COMMON STOCKS FUND
KELLOGG TRUST FUND

Section 4943 has mandated since 1969 that all holdings in the Kellogg Company by either the Trust or the Foundation, or in combination, be disposed of to the extent that said holdings exceed 35 percent. The actual experience with diversification in the past has been set forth above. The results cannot be said to have produced the best results for charity. The two charts appearing directly above, together with the statistics previously cited which project future growth in earnings and dividend distribution make it apparent to the Trustees of both the Trust and the Foundation that further disposition of Kellogg stock will not serve the charitable purposes.

When this fact is taken together with the points made above, which demonstrate that other provisions of the Foundation Tax Act of 1969 have covered and prevented the abuses with which such policy was concerned on the date of enactment, it is the hope of the Trustees that this Committee will see fit to recommend outright repeal of Section 4943. This would remove the section's inhibiting impact on the birth of new foundations and free the trustees of existing foundations to exercise their best investment judgments for charity.

Failing a recommendation for repeal, it is the desire and hope of the Trustees of both the Trust and the Foundation that Section 4943 will be removed concerning the holding of the Kellogg stock by an exemption.

Chairman RANGEL. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

I want to thank the panel. I think this has been one of the better ones that we have had.

We have heard some testimony this week and last about the possible abuse of the trusts. Would you care to comment on that, Dr. Mawby?

Mr. MAWBY. Thank you, Mr. Congressman. I am not aware of any abuse of the rights and responsibilities of trusteeship. It seems to me that provisions of the law which prohibit self-dealing, and we endorse that provision wholeheartedly. There are payout requirements which provide a reasonable and prompt return to charity. We endorse that.

The whole concept of public accountability we endorse. And of course, Federal and State trust laws further impose requirements upon trustees of public charities to serve the public interest.

We endorse those. But we think this particular section, which mandates divestiture of business holdings, inhibits the capacity of private foundation trustees to do their job fully.

Mr. DUNCAN. Do the other members of the panel concur in that?

Mr. CORBALLY. Mr. Duncan, I certainly would not want to have any of my feelings in favor of extension and opposed to exemption relate to a matter of trusteeship of a board or of a foundation.

Rather, I find myself in agreement with the concept that the board of a foundation is designed to manage charity and in our short history with the MacArthur Foundation we have found that the owning of 100 percent of that large complex business has simply been a diversion but it is clear to us has been in the way of our charitable business and from our experience we would tend to support the concept of not having large ownerships of single businesses.

Obviously one cannot argue with Russ' testimony. It may be if I looked at bankers stock and thought it would perform that well I would be arguing in a different way. I don't know.

Mr. DUNCAN. Do any of your foundations pay out for the public benefit more than the minimum required by the current law?

Anyone can answer this.

Mr. CORBALLY. Yes.

Mr. **Mawby**. Yes.

Mr. **Sugarman**. Yes.

Mr. **Cohen**. If I could volunteer, I would agree, the problem is conflict of interest. Who are you serving? When it comes down to one business, who are you serving? Human beings are subject to all kinds of pressures. This is one pressure in the charity area where we have some responsibility.

In the private area a private charity is given benefits by our statutes and I believe that is appropriate. I am all for it. However, we have to have some restrictions.

I would like to see more restrictions in the public area too because there are many situations that arise where institutions use a particular bank; they use a particular law firm; a particular whatever, not because it is the best for them, but because of the relationships.

We are all human beings. We can't help that and we have to build as many safeguards into the system, without stifling the system, as we possibly can.

Mr. **Sugarman**. May I respond briefly? I don't think what Mr. Cohen said squares with the experience of many other responsible people. We are human beings, but I think people do recognize their responsibilities, and a great many things have happened since 14 years ago when this committee held hearings on private foundations.

Foundations are much more responsible bodies on the whole than they were at that time. The State attorneys general are much more active in this area.

There are responsible practitioners who are advising these organizations. I don't like to see the whole field tarred because of an action of possibly a few. The attorneys general in their testimony here indicated they are active to police this area. I think they should be encouraged in that, but not everybody else put in a straitjacket.

Mr. **Mawby**. Mr. Duncan?

Mr. **Duncan**. Thank you, Mr. Chairman.

Chairman **Rangel**. Mr. Campbell?

Mr. Thomas?

Mr. **Thomas**. Thank you, Mr. Chairman.

I will stipulate to the human condition, Mr. Cohen, reluctantly at times, but you testified—at least the written testimony was pretty absolute, but you started to slip a little toward the end of how the business of charity is business.

The question I was going to ask you which was based on the last part of your verbal testimony is not quite as absolute as it was.

Is there any situation that you can conceive of where charity's purposes would be better served if the business holdings were retained and I was going to try to create a hypothetical situation and instead I have numbers up there.

Mr. **Cohen**. I have been through a lot of them. I have been through divestitures that were required by the act. On the whole, the trustees suffered. They had had, in one situation, the stock which was basically controlled stock of a public corporation; it was less than 50 percent, but it was a controlling block, and they held it for probably 50 or 60 years.

They had gotten it in the mid-1920's, and they anguished and anguished, but they got rid of it. The charity did not suffer at all. They were surprised at the lack of suffering.

Mr. THOMAS. What about the Kellogg numbers?

Mr. COHEN. I am impressed by those numbers.

Mr. THOMAS. The public was served well this way, but they would have been inclined to anguish if they had to divest?

Mr. COHEN. On the face it looks good. I don't know whether there was anything underneath of that.

I presume there is not.

I say the difficulty is if one allows this in Kellogg you must allow it to everyone. Then one has to be prepared, I believe that 15 years from today or maybe less, you will be having another set of hearings on what abuses have occurred in the meanwhile.

So I think you have to take account that there have been and will be abuses and build some kind of constraint, low or high fence.

Mr. THOMAS. Maybe we will continue to hear people indicate that charity and good purposes could have been served better if we had made adjustments in the law originally. Clearly it is not absolute. Even in your latest statement you say that on the whole.

My concern is that we have not had a review since 1969. Now we have an opportunity to examine some fine points. I notice, Mr. Sugarman, you call for absolute repeal as Mr. Mawby does, but you say, "If in case I can't get that I have some specifics I would like to fall back on." I just frankly think that that is probably where we are going to be, again stipulating to the human condition, examining situations where we might make minor changes that would assist good and worthy purposes without opening the floodgates so we don't go back to a pre-1969 position. That is possible. I think we can walk a fine line but not create undue burdens for people trying to do some very amazing good and worthy charitable functions based on the testimony I have heard.

So, Mr. Sugarman, there are a couple of things I would like to ask you about your fall-back position. I have been trying to understand the 1969 act. One of the things I don't fully appreciate, I guess, is the provision which is easier communicated as a downward ratchet rule where you are required to divest yourself of a certain percentage if disqualified persons modify their percentages. We have seen from the definition of disqualified persons it could be the grandson of a widow or someone who married someone who had no involvement with the stock in the first place.

I would like to have Mr. Sugarman respond. What was the rationale for including that automatic divestiture procedure?

Mr. SUGARMAN. The rationale was that while certain foundations were grandfathered in 1969 to maintain the holdings they held on May 26, 1969, at any opportunity they should be forced to divest to eventually get down to 20 percent.

Therefore, for example, if there were a death in the family that held some stock and the corporation redeemed that stock that would reduce the combined level and then——

Mr. THOMAS. Why 20 percent?

Mr. SUGARMAN. The 20 percent was a policy, that as Mr. Cohen indicated, someone picked out of wherever.

Mr. THOMAS. So there is nothing virtuous about 20. It could have been 25 percent or 30?

Mr. SUGARMAN. That is right. It represented a policy, and some of us think a punitive policy, to reduce the holdings of foundations and, as you have heard testimony from others, I think that one of the effects of that has been to make some of these corporations which are represented here take-over targets as a result because the 20 percent is directed to assist in a change in control.

That is why I was concerned about the effect on some of the smaller communities where these businesses and foundations are located.

Mr. THOMAS. And you offer some suggestions, and others have as well.

Mr. SUGARMAN. Yes, sir.

Mr. THOMAS. Do you want to react to all that, Mr. Cohen? The 20 percent, whether it is arbitrary or——

Mr. COHEN. It is an arbitrary percentage. I think it has to be something less than what could be a controlling block because otherwise you are in the same box.

Mr. THOMAS. How much is that?

Mr. COHEN. I don't know.

Mr. THOMAS. Would 21 percent be controlling?

Mr. COHEN. If you get to a large company, 30 or 35 percent often controls, 40 percent certainly will control.

Mr. THOMAS. You would feel comfortable with 30 or 35 percent?

Mr. COHEN. The grandfather clause is designed to let people hold more than 20 percent is the problem for substantial periods of time. That was the downward ratchet feature.

Mr. THOMAS. I was concerned with the dynamics of the ratchet down and those people disqualified having an effect.

Mr. COHEN. This chain of related parties goes on too far. There is no doubt about that. They were taking a short-range view of life.

Mr. THOMAS. There is an area where you might see a reasonable possibility for change in the law?

Mr. COHEN. Sure.

Mr. THOMAS. Unforeseen circumstances to protect individuals?

Mr. COHEN. Yes.

Mr. THOMAS. This is an area you would feel comfortable to explore modification because the numbers were arbitrary in the first place?

Mr. COHEN. Right.

Mr. THOMAS. What about the de minimis percentage up to 10 percent? How did you get that?

Mr. SUGARMAN. The present law has a 2-percent rule.

Mr. THOMAS. Right.

Mr. SUGARMAN. Which actually is zero in many cases because it depends on related foundations or charitable remainder trusts that might be created by someone.

It is a tricky area, but the concept was if the foundation had such a small percentage in the corporation, the IRS wouldn't bother with it.

The difficulty with that is that the way the 2-percent de minimis is whittled down by related rules, it is not enough.

I would suggest that the committee look at the rule which the SEC used which is a 10-percent rule. I think it is a much more accurate reflection of when you get significant holdings in a business corporation today.

Mr. **Thomas**. Your 10 percent was not pulled out of the air like the 20 percent.

Mr. **Sugarman**. It is in the statute.

Mr. **Thomas**. There is a basis for it and you think it is rational.

Mr. **Sugarman**. That is right.

Mr. **Thomas**. Mr. Cohen, any reaction to that?

Mr. **Cohen**. No, sir. It sounds high. The SEC has different relation rules. I would have to chart it out to see where it leads.

Mr. **Thomas**. If 10 is high, is 2 too low?

Mr. **Cohen**. I have had no experience where it has been unduly oppressive, but that doesn't mean there isn't a situation that exists. I would have to see.

Mr. **Thomas**. You are interested in repeal of 4943, Mr. Mawby. If that can't be accomplished, are you interested in working in reasonable changes within 4943?

Mr. **Mawby**. Certainly.

Mr. **Thomas**. It may not help your specific purposes as much as you would like, but, listening to various foundations, I think the difficulty is almost like the first amendment to the Constitution. Either you are going to accept the fact that Congress absolutely shall make no law period, or you are going to have to look at reality and decide when and where. That is where it will be difficult for us because we will be looking for some generic ruling that would apply to as many as possible. I prefer that approach rather than individual exemptions that go on ad infinitum. I happen to be one of those who not only stipulate to the human condition but agree that the only thing that is absolute is the statement that there are no absolutes. We are going to have to look at reality and make changes.

Mr. **Mawby**. If I might comment, I certainly agree with your approach on looking at a broad matter of principle rather than individual changes.

Certainly there are possibilities of abuse that must be considered. But, while I may be just a naive farm boy from the Midwest, my view of the world is somewhat different.

I think most people who are interested in devoting their fortunes to charity are good people. They fulfill their public trustee duties honorably. I know in southwestern Michigan of at least two cases where major fortunes would go to foundations if it would not result in destruction of the enterprise they have spent a lifetime creating.

So I am concerned also with the broad question of birth rate of private foundations which has moved to virtually zero now.

To say the business of charity is charity seems to me to express inadequately my duties as a public trustee.

As a foundation trustee I have the responsibility to both manage those assets, to maximize resources for charity, and to distribute the funds.

As a director of the company, my job is not that of management; it is of surveillance, just as I have to do with any investment for which I have responsibility as a public trustee.

Mr. **Corbally**. Mr. Thomas, I simply wanted to indicate that the MacArthur Foundation in a variety of discussions about our problem has found itself with almost universal acceptance of the fact, including Treasury and other agencies, of the fact that an extension could be warranted.

There are a number of philosophical questions about excess business holdings, trusteeship, all those things, which we think are important. I do keep hoping that our short-term need for an extension can be resolved before the major philosophical issues get totally resolved.

Mr. **Thomas**. Thank you, Mr. Chairman.

Chairman **Rangel**. Dr. Mawby, some people have a problem in distinguishing between the responsibility of a trustee to the foundation and also a deep-seated responsibility to those who founded the company, that have worked so hard and would like to perpetuate the employment and contribution they've made to the community.

Do you see an instance where a trustee—not to get involved in Kellogg—may, in order to preserve the trust, have to make a decision that could adversely affect the business?

Mr. **Mawby**. I think, Mr. Chairman, anything might be possible hypothetically. It seems to me that laws governing the responsibilities of corporate directors and those of public trustees are sufficiently precise and clear that those can be clearly distinguished and when you sit as a corporate director you have clearly different responsibilities than when you are exercising your trusteeship of a public trust.

Chairman **Rangel**. If you have different holdings, say from another business, would that not make your decisions easier than in having to decide what to do with stock held of the company that created the foundation?

Mr. **Mawby**. No, Mr. Chairman, I regard the question of the management of the trust portfolio as an investment question. The trustees of the trust are prepared to sell any and all whenever we are persuaded that that would be in the best interests of charitable pursuits.

Chairman **Rangel**. Notwithstanding the adverse effect on the company?

Mr. **Mawby**. Exactly. My responsibility as trustee of the trust is to maximize the benefits to charity. We think we have done very well.

Chairman **Rangel**. I am not arguing with that. You recognize your testimony is not for Kellogg. It is for changing the law.

Mr. **Mawby**. That is right.

Chairman **Rangel**. And you sit on the management board? Do you sit on the company board?

Mr. **Mawby**. I sit on the company board of directors.

Chairman **Rangel**. On the board?

Mr. **Mawby**. And function as a director as do the other——

Chairman **Rangel**. Of the company?

Mr. **Mawby**. Yes.

Chairman **Rangel**. So you do what is good for the company as relates to business decisions that have to be made?

Mr. **Mawby**. Yes, on behalf of all shareholders.

Chairman **Rangel**. What?

Mr. **Mawby**. I participate in those decisions on behalf of 22,000 shareholders.

Chairman **Rangel**. Then you put on another hat to protect the trust?

Mr. **Mawby**. Yes.

Chairman **Rangel**. But, for some others, do you see any situation under existing law where these functions should be in the hands of different people? Do you really believe that there is no——

Mr. **Mawby**. I think the prohibitions, Mr. Chairman, of self-dealing, the requirement of payout——

Chairman **Rangel**. I am not talking about self-dealing. We have taken care of that in 1969.

Mr. **Mawby**. I am talking specifics of trust law.

Chairman **Rangel**. No one doubts the good work of Kellogg Foundation, and no one doubts the success of the Kellogg Co., but we all don't deal with that kind of situation in every instance here in this area.

Mr. **Corbally**. Mr. Chairman, I sit, with more difficulty apparently than my colleague, on the board of Bankers Life & Casualty Co., in which it is very clear that the economic purposes of the company of a major insurance company in today's world may not be to maximize today's income, but as a matter of fact may be to invest a great deal of money currently to go into some new directions on behalf of the future of a very large corporation.

Yet, to do that it would be having a serious impact on the ability of the foundation to meet the payout requirements or to maximize above that.

Therefore, I would say my experience—which is different from Russ'—has been that that dual role, particularly where we are 100 percent of the shareholders of Bankers, is a very difficult role and one in which we are wearing two hats that are not always very compatible.

Chairman **Rangel**. Mr. Sugarman, how would you respond to that?

Mr. **Sugarman**. I would like to respond on this basis, even if each of these foundations had only 2 or 5 percent of the stock of a corporation, I think they have to monitor their investment.

I see nothing inconsistent with the representative of the foundation—whether it is an officer or investment adviser of that foundation—sitting on the board of a corporation in which they have——

Chairman **Rangel**. Would you respond to the dilemma that Dr. Corbally indicated concerning the insurance stock?

Mr. **Sugarman**. I would also suggest that the criteria for investments for foundation as well as others is not solely what income you produce today, but how good an investment is this and there are lots of criteria involved which take into account not just today's income, because, as the Kellogg situation indicates, over a long haul they have had a very good total return and you can't just look at one area.

Chairman **Rangel**. You don't see the dilemma presented?

Mr. **Sugarman**. I do think it is a problem.

Chairman **Rangel**. You do see it as a problem?

Mr. SUGARMAN. Life if full of tough decisions and this is one of them.

Chairman RANGEL. We can make it easier by not allowing one person to have to make those decisions.

Mr. SUGARMAN. Except you would then put the foundation in a position where it cannot easily monitor its own investments. I would rather the foundation be in a position where it will serve onthe board when it is in the foundation's interests or get off when it is not.

Chairman RANGEL. Who will make that decision?

Mr. SUGARMAN. I think the foundation and investment advisers have to make that. Even if they only own 1 or 2 percent of the stock of the corporation, it seems to me that they have to know what they are doing.

Chairman RANGEL. And I assume that you don't see any situation where dual ownership and trusteeship can cause any problems for the company or for the foundation?

Mr. SUGARMAN. I think there are problems in the area, but as part of human experience, people of good judgment and honesty will resolve those in the best way based on the particular situations.

I think the important point is that those who represent the foundation have to put the foundation's interests first. If they can't do that, they should get off the board.

Chairman RANGEL. You support repeal of the divestiture requirement?

Mr. SUGARMAN. Yes; because I don't think we can legislate judgment.

Chairman RANGEL. Thank you.

Mr. Pickle.

Mr. COHEN. Could I volunteer a point, Mr. Chairman?

Chairman RANGEL. Yes, Mr. Cohen.

Mr. COHEN. I agree with Dr. Corbally. The difficulty I find is that I know my judgment; I think it is pretty good. I don't trust the other fellow's. If I don't trust his, I better not trust mine.

Chairman RANGEL. Mr. Pickle.

Mr. PICKLE. I have no questions, Mr. Chairman.

Chairman RANGEL. Mr. Jones.

Mr. JONES. No questions.

Chairman RANGEL. Thank you so much. The record will remain open for any questions that we may have to ask you in writing.

[The following was subsequently received:]

JOHN D. AND CATHERINE T. MACARTHUR FOUNDATION,
Chicago, Ill., July 11, 1983.

Re extension of the 5-year divestiture period.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, House Ways and Means Committee, Washington, D.C.

DEAR MR. CHAIRMAN: As outlined to you at the Hearings on private foundation rules held by your Subcommittee on June 27, 28 and 29, the John D. and Catherine T. MacArthur Foundation (the "MacArthur Foundation") is required under Section 4943 to divest itself of its shares of Bankers Life and Casualty Company ("Bankers") by November 30, 1983. The MacArthur Foundation received a bequest of 100 percent of the shares of Bankers on December 1, 1978, following the death of John D. MacArthur. As set out in detail in the Summary provided to you, the MacArthur

Foundation has made all possible efforts to achieve divestiture by its November 30 deadline. However, no purchaser has been found to date and the likelihood of completing a sale by November 30 now appears virtually impossible. The MacArthur Foundation is at this point faced with a distress sale of Bankers unless it can obtain an extension of its November 30 deadline.

OVERWHELMING SUPPORT

As detailed below, witnesses testifying before your Subcommittee overwhelmingly support legislation which will authorize the Secretary of the Treasury to grant extension of the five year divestiture period in unusual circumstances such as those faced by the MacArthur Foundation. There was unanimous support to the effect that the MacArthur Foundation's situation justifies an extension, and that legislation permitting the grant of such an extension is urgently needed prior to November 30, 1983, in order that a distress sale of the MacArthur Foundation's holdings can be avoided.

Support of U.S. Treasury Department: Assistant Secretary for Tax Policy John C. Chapoton

Mr. Chapoton stated and commented in his written statement that the Treasury Department *supports* legislation authorizing the Secretary of the Treasury to grant extensions of the five year divestiture period in unusual circumstances, such as an exceptionally large gift or bequest which, despite the recipient foundation's diligent efforts, could not be disposed of during the initial five year period.

Support of Sheldon S. Cohen, former Commissioner of Internal Revenue and chief counsel, Internal Revenue Service

Mr. Cohen was Commissioner of Internal Revenue at the time of enactment of the Tax Reform Act of 1969 which added the private foundation rules to the Internal Revenue Code. Mr. Cohen testified in support of legislation authorizing the Secretary of the Treasury to grant extensions of the five year divestiture period in unusual circumstances where the recipient foundation, despite its efforts, was unable to dispose of its holdings within the initial period.

Support of Council on Foundations: Mr. James A. Joseph, president and chief executive officer

Mr. Joseph testified that the Council on Foundations, having carefully considered the rules requiring divestiture of excess business holdings, supported an extension of the 5 year period, stating:

"However, we have also consistently felt that one aspect of the rules was unnecessary and counterproductive—namely the short 5-year divestiture requirement for holdings acquired after 1969. A foundation subject to this relatively short deadline is at a substantial disadvantage in negotiating with prospective purchasers who may prolong negotiations in the hope of obtaining a better deal as the deadline pressures increase. An extension of the divestiture period for new holdings to 10 or 15 years would be preferable. As an alternative, we support giving the Secretary of the Treasury authority to grant time extensions where the burden is on the foundation to show that it has exercised good faith efforts to dispose of the holdings in a timely manner." (Page 20 of written statement.)

Support of Illinois Attorney General Neil F. Hartigan

The Attorney General of the State of Illinois discussed in his written statement the divestiture problem faced by the John D. and Catherine T. MacArthur Foundation, and the efforts of the Board of Directors to achieve divestitute within the initial five year period. The Attorney general noted that:

"At this point, the MacArthur Foundation is faced with a distress sale. A distress sale will mean that the assets of the Foundation will be liquidated at a price substantially below the value that they would generate if the sale could be made in the normal course of business. Inevitably, the Foundation's endowment base will be eroded. This erosion will mean that the foundation will be unable to continue its program of charitable giving on the scale and with the creativity and diversity which the Foundation has demonstrated in the five years of its existence." (Page 4 of statement.)

The Attorney General supported legislation which would authorize the Secretary of the Treasury to grant extensions:

"I support legislation which would authorize the Secretary of the Treasury to grant extensions if a foundation can demonstrate its need for additional time. Such legislation is appropriate and in the public interest. H.R. 2032, introduced by Congressmen Russo and Conable, incorporates provisions of the type which I am proposing. In my opinion, H.R. 2032 is consistent with the Congressional intent underlying Section 4943 for it obligates a foundation to demonstrate to the satisfaction of the Secretary of the Treasury its good faith attempts to dispose of the prescribed ownership in active businesses. The monitoring function which the Secretary of the Treasury is thus enabled to perform insures compliance with Section 4943 while providing flexibility for conditions which the foundation cannot control. I therefore support H.R. 2032 which would authorize temporary relief from divestiture by granting extensions in those circumstances beyond the foundation's control." (Page 5 of written statement.)

Support of the New York attorney general

The New York State Attorney General, represented by Jonathan Silberman, supported an extension stating:

"We recognize that an appropriate period must be allowed for the prudent disposition of excess holdings so as not to affect adversely a foundation's financial condition." (See page 4 of written statement.)

Support of National Committee for Responsive Philanthropy: Executive Director Robert O. Bothwell

The National Committee for Responsive Philanthropy is, as reported in the new York Times, July 3, 1983, a "watchdog" group for foundations.

The Executive Director Robert O. Bothwell supported the extension stating:

"We recommend that Congress accept the MacArthur Foundation's proposal. That proposal would keep the current law, but allow the Secretary of the Treasury to extend the period of time during which foundations must dispose of excess business holdings acquired after 1969." (Page 14 of written statement.)

Support of the Honorable Fortney H. (Pete) Stark, M.C., California

Representative Stark was strongly opposed to any attempts to repeal or alter the divestiture requirements of Section 4943. However, Representative Stark stated that "One or two foundations that are attempting to comply may have a specific problem divesting within the time limits under the law. Short term relief may be necessary." (See page 5 of the written statement.)

In his oral comments before the Subcommittee, Representative Stark expressed his support for legislation which would authorize the Secretary of the Treasury to grant extensions of the five year divestiture period, in circumstances where the private foundation faced unusual hardships in disposing of its excess business holdings.

Support of Norman A. Sugarman, former Assistant Commissioner of Internal Revenue Tax Exempt Organizations

Mr. Sugarman, former Assistant Commissioner of Internal Revenue, attorney practicing in the area of exempt organizations, and well-known author and speaker, including co-author of the American Law Institute—American Bar Association publication "Tax Exempt Charitable Organizations", submitted a written statement regarding the excess business holdings provisions of Section 4943. Mr. Sugarman proposed certain revisions to Section 4943(c)(6) dealing with the 5-year period provided to foundations which received gifts or bequests of business interests after 1969 including extensions of the divestiture period in circumstances in which an orderly disposition of excess business holdings is not possible, stating:

"Since the enactment of this transitional rule [Section 4943(c)(6)], several problems have emerged which result in hardship or otherwise unintended results. One problem is that the five year period of the transitional rule is too short. This is particularly the case where the holdings constitute a substantial part of the equity of a business enterprise. The tremendous changes in economic conditions in the period since 1969 have shown that a proper distribution of shares of stock may not be feasible in a comparatively short period. Further, a sale in a bad market can cause substantial loss to a foundation and a sacrifice of funds which otherwise should be available for charitable purposes. Accordingly, good reasons exist for extending the period of time beyond five years."

Support of H. E. Butt Foundation

H. E. Butt Foundation, represented by Vester T. Hughes, Jr., supports extending the 5-year divestiture period in order to avoid distress sale of charitable assets by enacting S. 562 [which incorporates provisions substantially identical to H.R. 2032]. Mr. Hughes testified that such legislation would provide for "orderly divestiture" and "help to prevent at least some of the loss of assets that have been irrevocably committed to charitable purposes" (see page 8 of written statement). Mr. Hughes also noted that "Section 4943 directly injures foundations by forcing distress sales of major assets. Excess business holdings typically consist of large blocks of stock of closely held corporations for which there is no outside market . . . . Thus, the foundation is forced to sell what is likely one of its major assets in a limited market against a statutory deadline. The resulting sale will frequently entail a windfall for the private buyer and a large loss of charitable assets." (See page 4 of written statement.)

Support of the General Mills Foundation: Mr. James P. Shannon

The General Mills Foundation, which is a corporate foundation established by General Mills Corporation, in its written statement expressed the hope that "private foundations seeking relief from Congress concerning divestiture of their excess business holdings would be treated with equity, and that any decisions responding to their petitions would be predicated, in equity, on the individual merits of each foundation's particular situation." (See page 4 of written statement.)

Support of the Powell Family Foundation: Marjorie P. Allen

Marjorie P. Allen, president of The Powell Family Foundation having assets of about $25 million, made the general observation that "the requirement of divestiture of excess business holdings is extremely severe and has certainly limited the creation of private foundations. *I strongly endorse the proposed extension of the time for divestiture,* and in addition, would urge that the committee give consideration to some other means of preventing abuses other than the purely mechanical test of percentage of stock ownership." (Emphasis added.)

Support of the United Negro College Fund, Inc.: President Christopher F. Edley

The testimony of the United Negro College Fund, a donee organization, illustrates the creativity and responsiveness of the MacArthur Foundation's programs which would be diminished if a distress sale is to occur. The written statement of the United Negro College Fund, Inc., noted at page 5 that:

"A newer program on the UNCF is the Distinguished Scholars Program established in 1981 by the John D. and Catherine T. MacArthur Foundation [by a $2.5 million grant]. This five year program has two phases. In phase one, scholars drawn from the UNCF faculty are supported for one year to pursue research in their particular disciplines. In phase two, scholars from the general public are invited to serve an academic year in residence at a UNCF institution. While there, they share their experience with students, faculty and the local community. This program allows scholars at UNCF colleges to pursue original research and promote the opportunity for intellectual exchange between distinguished scholars and UNCF college communities. Clearly, programs such as the MacArthur Program enhance the effectiveness of the faculty and enrich the quality of education on UNCF campuses."

The various witnesses quoted above, who represent all aspects of the foundation world, support legislation which would authorize the Secretary of the Treasury to grant extensions of the five year divestiture period under certain circumstances in which, despite the efforts of the recipient private foundation, the private foundation cannot achieve divestiture of business holdings received by gift or bequest within the specified deadline. No witness raised the slightest objection or concern regarding the proposed legislation to grant extensions, nor did any witness question the diligent and continuous efforts of the MacArthur Foundation to achieve divestiture by the November 39, 1983, deadline.

Because of the imminent November 30, 1983 deadline, time is of the essence if the MacArthur Foundation is to avoid a distress sale. Immediate legislative action is needed to authorize grants of extensions of the divestiture period by the Secretary.

As discussed in detail in the MacArthur Foundation's summary previously provided to all members of the Subcommittee, the MacArthur Foundation has diligently tried throughout the entire 5-year divestiture period to dispose of its excess business holdings. However, because of the unusual size of bequest (which now has a value in excess of $2.3 billion) and because of the unusually complex nature of the corporate entities which hold various diverse and unrelated properties, the MacArthur Foundation has been unable to achieve divestiture before November 30, 1983. At this points, legislation authorizing extenstions is urgently needed, as the MacArhur Foundation's November 30 deadline is imminent.

We urge that the Subcommittee take immediate action by recommending to Committee of Ways and Means that appropriate legislative action be taken for the passage of H.R. 2032 authorizing extension of the 5 year divestiture period. Unless appropriate leglislative action is taken immediately, the Directors of the MacArthur

Foundation will have no alternative but to sell Bankers at a distress price which will ultimately be to the detriment of the potential donees of the Foundation.

Respectfully submitted,

JAMES M. FURMAN,
Executive Vice President,
John D. and Catherine T. MacArthur Foundation.

Chairman RANGEL. The next panelist is from my hometown, the Altman Foundation. Mr. John Burke, president and trustee of the Altman Foundation and chairman of the Altman Department Store.

For the purpose of introducing the next witness on the panel, the Chair recognizes Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Chairman, I am pleased to recognize Mr. Walter Zivley, general counsel of the Houston Endowment. He is a distinguished attorney in our State. He has with him Mr. Charles Sapp, who is interested in forwarding the work of the endowment.

I am pleased to welcome them here and I am anxious to hear their testimony.

Chairman RANGEL. The Chair recognizes Mr. Gejdenson.

STATEMENT OF HON. SAM GEJDENSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. GEJDENSON. Thank you, Mr. Chairman.

Later today you will have Deane Avery, publisher of the New London Day, testifying. He started with the New London Day as a court reporter and is now publisher, and the one argument I hope the committee listens to in Mr. Avery's testimony is that we do a lot of things in tax policy and that insuring the independent free press is probably the highest order we can concern ourselves with.

I thank the Chair for holding these hearings and if there are additional questions I can answer later, I will be happy to do so.

Thank you.

Chairman RANGEL. The Chair recognizes Mr. Campbell.

Mr. CAMPBELL. Thank you, Mr. Chairman.

We have representatives of the Public Welfare Foundation, Mr. Davis Haines, president, accompanied by Mr. Hubert Hendrix, publisher of the Spartanburg Herald Journal, an outstanding newspaper in my district.

We are delighted to have them with us today.

Chairman RANGEL. The Chair recognizes Mr. Jones of Oklahoma.

STATEMENT OF HON. JAMES R. JONES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. JONES. Thank you for giving me this opportunity to make a statement before the subcommittee.

I have been following these hearings. However, due to budget matters this week I have not been able to be here personally.

I have a prepared statement which I would like to have entered in the record.

Chairman RANGEL. Without objection.

[The prepared statement follows:]

STATEMENT OF HON. JAMES R. JONES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

I would like to thank you for providing me with this opportunity to submit testimony on the current tax rules governing private foundations.

In this Subcommittee's attempt to evaluate what impact the 1969 reforms have had on private foundations, Mr. Chairman, I hope this body will be guided by two overriding objectives.

First, it is our duty to ensure that the public interest is well-served. Clearly, only those foundations operating for the public benefit should enjoy favorable tax treatment. At the same time, however, Congress should be mindful of the role private foundations play in America. The rules by which we expect private foundations to operate should not be needlessly burdensome nor hopelessly antiquated.

I cannot over-emphasize the importance of the task before us. During the previous two days of testimony you have been told of the many historic accomplishments of private foundations. Those accomplishments continue today. You have heard about the miraculous medical breakthroughs that are due, in no small part, to the funds of private foundations; those also continue today. You have heard how these organizations assist in meeting our country's basic human needs. You have heard of the educational grants, scientific studies, and research awards made available by American foundations. A cursory glance at the testimony given reveals the role foundations have played in improving the quality of life.

Eighteen years ago, a Department of the Treasury Report on private foundations concluded, "private philanthropy plays a special and vital role in our society . . . (and) private foundations have an important part in this work." Our lives have been deeply enriched and society has greatly benefitted by the philanthropic activities of private foundations. These organizations continue to serve the public interest. In my own State, Oklahoma, over $10 million in gifts were distributed last year by 182 foundations.

Despite the remarkable successes of private foundations, the Subcommittee has recently heard alarming news on the present well-being of American foundations. You have heard that the creation of new foundations has significantly declined during the past decade; in fact, it has declined since passage of the 1969 reforms. During the 1960s, over 750 new foundations with assets in excess of $1 million were created. Yet, only 255 foundations of that size were established during the 1970s. Moreover, contributions to private foundations, as a percentage of the Gross National Product, dropped 50 percent between 1969 and 1981. It has been documented that the total assets of such organizations, in the same time period, dropped by 25 percent.

I believe it is abundantly clear that the rules passed in 1969 have had an adverse impact on private foundations.

1965 DEPARTMENT OF THE TREASURY APPRAISAL OF PRIVATE FOUNDATIONS

The 1965 Treasury report on private foundations was conducted in response to a request by Congress. The report identified six major reasons that foundation assets were not being fully utilized for charitable purposes. The report found that donors who had created private foundations of made contributions to private foundations had engaged in nonphilanthropic transactions with such foundations. This is also known as "self-dealing." Although donors to private foundations were benefiting from the charitable deductions, there was often undue delay in the delivery of benefits to charity. Futhermore, many foundations had become too deeply involved in the active conduct of business enterprises, resulting in noncharitable use of foundation assets. In some cases, donors transferred the stock of corporations to private foundations, yet the donor still maintained control over the business. Foundations were sometimes engaged in financial transactions unrelated to charitable functions. Finally, donors and their families were able to exercise undue influence on the management of foundation affairs.

The report not only identified areas of current and potential abuse, but it also made specific recommendations for legislative action. Even in light of the problems highlighted in the 1965 Treasury report, the Department rejected the concept that foundations should be given limited lives.

The foundation provisions contained in the Tax Reform Act of 1969 were the tax-writing committees' response to the abuses outlined in the 1965 report.

Two days ago, one of the most knowledgeable former Members of this Committee stated that foundations were an easy target in 1969. Conservatives then suspected that private foundations were to deeply immersed in radical policies; liberals, on the other hand, suspected foundations were nothing more than puppets for big business, with more interest in profit than in poverty.

The former Member stated that "enough time has passed to again look . . . (at) whether adjustments (in the 1969 Act) are needed." Mr. Chairman, I look forward to working with this Subcommittee on all aspects of the rules governing private foundations.

EXCESS BUSINESS HOLDINGS PROVISIONS

Let me turn, however, to one question that I have been directly involved with over the last several years: namely, the 1969 provisions requiring foundations to divest themselves of business holdings acquired by gift or bequest.

Prior to enactment of the 1969 reforms, a number of individuals created foundations to avoid paying estate taxes on family enterprises, while at the same time maintaining effective control over these businesses. To stop this practice, Congress passed a provision to force ali foundations to divest themselves of majority ownership in all ongoing enterprises. Although several clearly abusive cases were rectified, the action taken in 1969 was similar to throwing the baby out with the bathwater. Revisions in section 4943 are clearly long overdue.

I believe the testimony that will be given today will decisively show that the concerns leading to the 1969 reforms are not a problem today.

Let me briefly mention two foundations affected by this provision, both of which I am intimately familiar. In my District, there is a foundation which provides care solely for orphans and widows. It supports itself fully through its business holdings. Established in 1908, the foundation has cared for a total of 800 independent children and has given substantial care for more than 3,000 widows and more than 8,000 of their dependent children. The abuses Congress was attempting to eradicate in 1969 are not even remotely applicable to this foundation. The foundation has been in existence longer than income and estate tax laws.

Another foundation in my District was established by a couple with no natural-born or adopted children. Furthermore, neither the husband nor the wife served as "managers" of the foundation, nor did they sit on the foundation's Board of Trustees. Both the wife and husband passed away in the early 1960s, but because of the couple's devotion and interest in their community, the foundation is operating today, and the trustees anticipate that the foundation will give grants in excess of $15 million during the current fiscal year.

These two examples are among the many worthwhile foundations which have been unnecessary hurt by the overly broad Act of 1969. AT this time, the foundations in my District are facing the prospect of divesting themselves of their business holdings at "fire-sale" prices.

Even more alarming, Mr. Chairman, is my fear that the excess business holdings provisions have had a chilling effect on potential contributions to private foundations. Why should citizens contribute the holdings of their lifelong achievements to a private foundation, knowing that those achievements will be dismantled in a relatively short period?

The 1969 reforms were enacted in what one participant described as a "charged atmosphere." The reports, documents, and personal accounts that have been filed with this Subcommittee in three days of testimony indicate we have corrected "the abusive cases." It is now time to re-evaluate the actions taken in 1969. As I stated earlier, we should be guided by two objectives in this endeavor. First, we should eliminate or revamp burdensome and antiquated laws. Second, we should make certain only foundations operating for the public, and not private, benefit enjoy favorable tax treatment.

Mr. Chairman, I hope the eventual action taken by our Committee will remove the restrictions that are impeding private foundations in their efforts to deliver charitable services to the public.

Mr. JONES. I would like to summarize that part of the prepared testimony which deals with the question of divestiture. The 1969 act requires foundations to divest themselves of business holdings acquired by gift and bequest. In 1969 there were several clearly abusive cases that were identified. I think those cases have been rectified. The action taken in 1969 was similar to "throwing the baby out with the bath water."

Revisions of 4943 are clearly long overdue.

Briefly, two foundations from my own district are affected by this provision. One foundation is an organization which provides care solely for orphans and widows; it supports itself fully through its business holdings. It was established in 1908. The foundation has cared for a total of 800 children, given substantial care for more than 3,000 widows, and more than 8,000 of their dependent children.

The abuses Congress was attempting to eradicate in 1969 were not even remotely applicable to this foundation. The foundation is and has been in existence even longer than the income tax or the estate tax laws.

Another foundation in my district was established by a couple with neither natural born nor adopted children.

Furthermore, neither the husband nor wife served as managers nor did they sit on the foundation's board of trustees.

Both the wife and hushand passed away in the early 1960's, but, because of their interest in the community, the foundation is operating today. The foundation which will give grants in excess of 15 million in the current year. These are but two examples of many which foundations have been unecessarily hurt by the overly broad act of 1969.

The foundations in my district are facing the prospect of divesting themselves of their business holdings at firesale prices. Even more alarming, Mr. Chairman, is my fear that the excess business holdings provision has had a chilling effect on potential contributions to private foundations.

Why should citizens contribute holdings of their lifelong achievements to private foundations knowing that those achievements will be dismantled in a short period?

The 1969 reforms were enacted at a time of a very charged atmosphere. I don't believe that exists today. I believe there needs to be changes in the divestiture provisions. I hope this subcommittee will make recommendations to the full committee so this problem can be rectified.

Thank you.

Chairman RANGEL. Thank you, Mr. Jones.

The Chair would point out that while we are operating under the 5-minute rule, the subcommittee does have your written statement and is fully aware of the great and fine and necessary work that is being done by the respective foundations.

I don't think that that has ever been an issue and the only thing we are trying to do is to make certain that the laws do not provide an undue burden for that good work to continue.

The problems that we have, of course, that relate to lack of diversification and divestiture have been pointed out by public officials from the State level who monitor foundations. And, of course, we do have the problem of trying to decide whether foundations should be in the newspaper business, hotel business, department store business, or own a telephone company, cereal companies, supermarkets, or fruit companies. We have the problem, further, of trying to determine whether or not these are competing and conflicting interests, when the same people are making decisions for the foundation and for the business.

Now that you recognize fully the issues before the subcommittee, we hope that you would take most of the 5 minutes to make recommendations as to what you think we should be doing.

Certainly I know of the fine work that Altman's is doing, both as a business and as a foundation. Having said that, I welcome the testimony.

STATEMENT OF JOHN S. BURKE, JR., PRESIDENT AND TRUSTEE, ALTMAN FOUNDATION

Mr. **Burke.** I am John S. Burke. I am accompanied today by William Morris of the law firm of Reid & Priest of New York and Washington, D.C.

I am the president of the Altman Foundation and chairman of the board of B. Altman & Co., the New York-based retail department store group.

I have been employed by the company since 1946 and I have been associated with the Altman Foundation since 1948.

The Altman Foundation wa formed in 1913 by Benjamin Altman without any income tax or estate tax advantage to Mr. Altman. His foundation was pure philanthropy. The foundation, a New York nonprofit corporation with an office in New York City, carries out its charitable purposes through grants to cultural, educational, and religious organizations. These grants have been made in the main to social welfare organizations, hospitals, universities, libraries, youth groups, and neighborhood associations.

When Mr. Altman died in 1913 without a family, he left two important legacies to the people of New York—his famous art collection went to the Metropolitan Museum of Art; his entire interest in the store went to the Altman Foundation for the benefit of the people of New York through charitable giving and for the benefit of his employees.

For more than three generations the foundation has touched the lives of millions of New Yorkers. It has given more than $24 million to nearly 1,000 different charitable organizations operating in New York.

Grants from the foundation have been as small as $5—primarily in its earlier years of operation—and as large as $100,000. In 1982 we distributed our entire net income of $790,500.

For years we have been a consistent supporter of a range of recognized and effective charitable organizations since we know they must budget in advance in order to plan their charitable activities.

The foundation, operated by a board of six trustees, incurs minimal operating costs. The total expenses of the foundation including Federal excise tax, amount to about $70,000 per year, including $20,000 connected with the preparation of annual financial statements and forms filed with the IRS.

All funds received by the foundation are distributed each year to charities. In the past decade we have distributed funds in excess of net investment income in 6 separate years.

The primary gift of stock to the foundation was made by Benjamin Altman prior to the enactment of the first Federal estate and gift tax provisions and was made without tax motivation or advantage.

Under section 4943 the foundation is required to dispose of approximately 50 percent of its stock in B. Altman & Co. by May 25, 1984.

Significant attempts have been made to arrange the required sale. However, disposition efforts have been adversely affected by market conditions. Since 1969 the Altman Foundation has engaged in serious discussions with potential purchasers of B. Altman & Co. These efforts have been unsuccessful.

Potential purchasers, aware of the foundation's need to sell the business, have made offers which significantly undervalue the assets and operating worth of B. Altman & Co.

As fiduciaries, the trustees could not accept the terms and conditions of the offers. Consequently, we strongly support the call for modification and/or repeal of section 4943.

Specifically, we urge approval of legislation which considers the circumstances of the Altman Foundation. The underlying rationale for section 4943 is to insure that funds set aside for philanthropy, encouraged by income and estate tax deductions and income tax exemptions actually are distributed to benefit the public.

In the case of the Altman Foundation, Federal income and estate tax deductions were not a motivating factor.

Benjamin Altman was far ahead of his contemporaries in his concerns for charity. Since 1913, his intentions have been faithfully followed by all those who have been temporarily vested with responsibility for the operation of his foundation.

Accordingly, we believe an exemption from the excess business holdings provisions of section 4943 should be provided to certain foundations—those where no Federal income or estate tax deduction was claimed for the value of the stock transferred to fund the private foundation

The details of this proposal are in my prepared statement submitted for the record

We are not unmindful that Congress may wish to address the issue of excess business holdings on a broader basis.

We believe it would be appropriate to consider modifications to insure maximum charitable distributions and independent operation of foundations and the businesses they own.

We support broader public distribution of information about foundations' charitable work. We expect to be fully accountable for our work on behalf of the foundation. We are prepared to work with the appropriate committee staffs and the Treasury Department to develop the necessary rules and safeguards.

The Altman Foundation is faced with a rapidly approaching deadline under section 4943. Unless this set of general rules can be devised and approved soon, the foundation will be forced to dispose of about half its holdings in B. Altman & Co. in less than 1 year. This would result in a fire sale.

We therefore urge, in the alternative, that a 5-year extension of time be granted to all private foundations now required to dispose of excess business holdings under section 4943.

We believe one other area affecting private foundations is in need of review. That involves the termination of private foundation status under section 507 of the code. The details of this proposal are in my prepared statement submitted for the record. We ask this subcommittee and the full Ways and Means Committee revise sections 4943 and 507 of the code as quickly as possible.

Thank you for the opportunity to appear before the subcommittee today.

Chairman RANGEL. Thank you, Mr. Burke.

[The prepared statement follows:]

STATEMENT OF JOHN S. BURKE, PRESIDENT OF THE ALTMAN FOUNDATION

SUMMARY OF PRINCIPAL POINTS

(1) The Altman Foundation proposes that section 4943 of the Internal Revenue Code be amended to provide that:

(*a*) Certain private foundations which were created with contributions for which no deduction was claimed under the Federal income or estate tax laws be exempted from the divestiture rules applicable to so-called "excess business holdings";

(*b*) in the alternative, a 5 year across-the-board extension of time be granted to those foundations which must dispose of "excess business holdings" on or before May 25, 1984, under Section 4943 to permit the Congress to develop appropriate across-the-board legislation; and

(*c*) under certain circumstances, private foundations be permitted under section 507 of the Code to terminate private foundation status on the payment of a "toll charge" equal to 25 percent of their net asset value.

(2) Forced disposition of the stock of B. Altman & Co. within the current deadline would probably require a sale at less than the true fair market value of such stock and significantly impair the interest of New York charities in the Altman Foundation.

(3) The abuses at which section 4943 were directed have never been present in the case of the Altman Foundation and B. Altman & Co. enjoys no competitive advantage as a result of the Foundation's ownership of its stock.

(4) The Congress, already committed to providing tax incentives for the preservation of historic properties, should now move to revise a statutory scheme which systematically forces the liquidation of "living" historic entities such as the Altman Foundation.

ATTACHMENT I

The Altman Foundation--Detailed Explanation of Need for Legislation

The Altman Foundation (the "Foundation") was formed in 1913 by Benjamin Altman prior to his death. The Foundation, a New York nonprofit corporation with its offices in New York City, is a tax-exempt charitable organization and is classified as a "private foundation" under the Internal Revenue Code. The Foundation carries out its charitable purposes through making grants to cultural, educational and religious organizations.

Background

Benjamin Altman opened his first retail establishment in New York City in 1865. Altman's business prospered and moved to larger and larger quarters, ultimately relocating to its present main location of 5th Avenue and 34th Street in 1906. During that period Benjamin Altman, in addition to being a successful businessman, became a world renowned art collector. When he died in 1913 he left two important legacies to the people of New York. He left his entire art collection, including one of the finest collections of Chinese porcelain in the world and the largest number of original Rembrandts (13) ever assembled in one collection to the Metropolitan Museum of Art. He also created the Altman Foundation to which he left his entire interest in B. Altman & Co.

The Altman Foundation ("Foundation") was incorporated prior to Benjamin Altman's death by special Act of the New York State Legislature, on April 1, 1913. The Foundation received its corporate charter " . . . for the purpose of receiving and maintaining a fund or funds, administering the same, and applying the principal and income thereof, and either of them, to promote the social, physical or economic welfare and efficiency of the employees of B. Altman and Company, a New York Corporation, and to the use and benefit of charitable, benevolent or educational institutions within the State of New York . . ." The Act further provides that the Corporation shall not be maintained or conducted for pecuniary profit and that no member of the corporation shall be entitled to receive any such profit.

In 1964, the Foundation's corporate charter was amended to limit its activities to supporting charitable or educational institutions within the State of New York. This change was made to insure that no activities inconsistent with the Foundation's tax-exempt status under section 501(c)(3) of the Code could be undertaken.

On Benjamin Altman's death, pursuant to his original will dated May 2, 1912, and a Codicil dated June 12, 1913, more than 50 percent of the stock of B. Altman & Co. was transferred to the Altman Foundation. The remaining stock in B. Altman was held by various employees of the Company, received under Mr. Altman's general policy of motivating key employees through employee stock ownership. An additional 360,000 shares was transferred to the Foundation in connection with the termination of a separate foundation set up by Altman's close friend and business associate and successor as B. Altman & Co.'s President, Colonel Michael Friedsam in the late 1930's. On May 26, 1969, the Foundation held more than 94% of the stock of B. Altman & Co. On that same date, the Foundation together with all disqualified persons, held 98.8% of the stock of B. Altman & Co.

Since its creation, the only operating business entity which the Foundation has held has been B. Altman & Co. which operates department stores in and around New York City. (New York City, Manhassat, White Plains, Paramus, N.J., Short Hills, N.J., St. Davids, PA., and Willow Grove, PA.) More than half of the Foundation's income is from dividends on its B. Altman & Co. stock. The balance of the Foundation's income is from dividends on publicly traded securities and interest on corporate and government securities.

Activities of the Foundation

Over the past 70 years, the Foundation has given more than $24 million to nearly 1,000 different charitable organizations operating in New York. A brief list of a few of the major beneficiaries includes the Federation of Jewish Philanthropies, Catholic Charities of the Archdiocese of New York, Federation of Protestant Welfare Agencies, Inc., New York University, Fordham University, St. Luke's Hospital, St. Vincent's

Hospital, the Urban League, the Salvation Army, the Boy Scouts, the Lenox Hill Neighborhood Association, the New York Urban Coalition, Casita Maria, Inc., and the New York Public Library.

Grants from the Foundation have been as small as $5 (primarily in its earliest years of operation) and as large as $100,000. Foundation grants of $100 or more made since it commenced operations are set forth in Attachment II.

The Foundation incurs minimal operating costs. Only one trustee, the Treasurer, of the Foundation receives compensation for his services and that amount has been fixed at $4,500 for at least the last 35 years. The Secretary to the Foundation receives $4,000 per year. The total expenses of the Foundation (including Federal excise tax) amount to about $70,000 per year of which approximately $20,000 is incurred in connection with the preparation of its annual financial statements and Form 990-PF filed with the Internal Revenue Service. All of the funds received by the Foundation, after payment of its minimal operating expenses and the 2% excise tax ($19,500 for 1982) on its net investment income, are distributed each year to the various charities it supports. Between 1972 and 1982, the Foundation has distributed funds to charitable recipients in excess of its net investment income in six separate years. A chart providing the years and amounts of such distributions is included as Attachment III. In addition, the Foundation's operating expenses since 1972 are set forth in Attachment IV.

Administration of the Foundation

The Foundation is governed by a Board of Trustees consisting of six members. None of the Trustees are related to Benjamin Altman or any members of his family. Only one Trustee, John S. Burke, is an officer of B. Altman & Co. He is the Chairman of the Board of the Company and President of the Board of Trustees of the Foundation. It was Benjamin Altman's testamentary wish that the chief executive of B. Altman & Co. serve as a trustee of the Foundation but that no other officers or employees of the Company so serve to permit the Foundation to operate independently of the Company. Benjamin Altman also provided in his will that the trustees ". . . shall be of such position, standing, character and independence as honestly and unselfishly to carry out my intentions . . ." Attachment V consists of a brief biography of each of the current trustees.

One trustee, John S. Burke, is the owner of 7,500 shares of B. Altman & Co. This stock was acquired in 1947 and must be offered for sale to the Foundation or B. Altman & Co. for $1 per share during his employment with B. Altman & Co. or should he cease to be an employee of the Company, he or his personal representative must offer the stock to the foundation or B. Altman & Co. at a price of $4.50 per share. Two retired former employees of B. Altman & Co. hold 5,000 shares each of Altman stock under the same terms. All other issued and outstanding shares of Altman stock are held by the Foundation.

Relationship Between the Foundation and B. Altman & Co.

The Foundation has never entered into commercial transactions, e.g., leases, sales or loans with B. Altman & Co. The Foundation has never made contributions to the capital of B. Altman & Co. and has never influenced the payment of dividends. There have been no acts of self-dealing between the Foundation and its trustees. Those trustees who are also directors of B. Altman & Co. have never been forced to devote less time and attention to their duties as trustees of the Foundation than was otherwise appropriate because of their duties as directors of B. Altman & Co. B. Altman & Co. is a separate taxable corporation, subject to all state, local and Federal taxes.

Foundation Holdings of B. Altman & Co. Stock

All of the stock of B. Altman & Co. held by the Foundation was transferred to the Foundation by gift prior to the Tax Reform Act of 1969. The primary gift of stock to the Foundation was made by Benjamin Altman prior to the enactment of the first Federal estate and gift tax provisions and was made without tax motivation or advantage.

Under the provisions of section 4943 of the Code (enacted as part of the Tax Reform Act of 1969) the Foundation is required to dispose of approximately 50% of its stock in B. Altman & Co. by May 25, 1984. Significant attempts have been made to arrange the required sale. Disposition efforts have been significantly affected by market conditions since 1969.

Generally, department store retailing is a mature segment of the retailing industry and is not viewed as a rapid growth investment opportunity.

Since 1969 the Altman Foundation has engaged in serious discussions with potential purchasers of B. Altman & Co. in an effort to comply with the Tax Reform Act of 1969. These discussions have involved proposed takeovers by other large regional retailers. In addition, there have also been discussions regarding the acquisition of an interest in B. Altman & Co. by investment groups. These efforts have proved to be unsuccessful. Potential purchasers, aware of the Foundation's need to sell the business have made offers which significantly undervalue the assets and operating worth of B. Altman. The trustees, under their fiduciary obligation to the Altman Foundation, could not accept the terms and conditions of the offers tendered or proposed to be tendered.

Given the difficulty in locating potential buyers for B. Altman & Co., the existence of high interest rates which has made such an acquisition less attractive to potential purchasers, and the recent sub-par performance level of our economy in general, forcing a sale of B. Altman & Co. at this time would severely devalue the interest of the charitable beneficiaries of the Altman Foundation.

Proposed Legislation

We strongly support the call for modification and/or repeal of section 4943 urged by the various witnesses appearing before the Subcommittee today. Specifically, we would urge you and your colleagues to consider legislation which takes into account the special and unique circumstances of the Altman Foundation. As you know, the underlying rationale for section 4943 is to ensure that funds set aside for philanthropic purposes, encouraged by income and estate tax deductions and income tax exemptions, actually are disbursed to benefit the public.

In the case of the Altman Foundation Federal income and estate tax deductions were not a motivating factor. Benjamin Altman was far ahead of his contemporaries in his concerns for charity. In 1913, before the imposition of the first Federal estate tax, he provided that his stock in B. Altman & Co. be placed in a New York nonprofit corporation, to be directed by a group of independent, honest and unselfish individuals to carry out his intentions. Since 1913, his intentions have been faithfully followed by all those who have been temporarily vested with responsibility for the operation of his Foundation. Moreover, the Foundation has consistently made grants equal to its entire net income annually and, in six of the last eleven years, has even distributed funds in excess of its net income.

Accordingly, we believe that an exemption from the "excess business holdings" provisions of section 4943 should be provided for a private foundation if:

(1) the foundation owned 90 percent or more of the voting stock in an incorporated business enterprise on May 26, 1969;

(2) the stock described in (1) was acquired by the foundation solely by purchase, gift, devise, or bequest before December 31, 1966;

(3) no Federal income or estate tax deduction was claimed for the value of the stock originally transferred to provide the funding for the private foundation;

(4) neither the donor of such stock nor any member of his family (within the meaning of section 4946(d) of the Code) is a manager of such foundation (as defined in section 4946(b) of the Code) on or after December 31, 1956.

(5) On May 26, 1969, and at all times thereafter--

(a) the private foundation's incorporated business enterprise consisted of substantially all of the operating assets of the corporation used in operating a retail department store business enterprise, and

(b) the retail department store business enterprise described above is of substantially the same character as the enterprise which was conducted by the corporation on the date of the last gift, devise, or bequest of such stock of such corporation by any donor or member of his family, and

(c) substantially all of the operating assets of the corporation are used in operating such retail department store business enterprise.

This provision shall apply to the private foundation only if the foundation does not acquire any stock or other interest in any business enterprise on or after May 26, 1969, which would otherwise constitute excess business holdings under section 4943 of the Code.

Mr. Chairman, we are not unmindful of the fact that the Congress may wish to address the issue of so-called "excess business holdings" by private foundations on a broader basis. In that regard, we believe it would be appropriate to consider modifications to section 4943 carefully drafted to ensure maximum distributions to charity and independent operation of such private foundations and the operating businesses whose stock they own. We are prepared to work with the appropriate Committee staffs and the Treasury Department to develop the necessary rules and safeguards which would be preferable to the current arbitrary mandate of section 4943 which applies regardless of other policy considerations.

For 70 years the Altman Foundation has contributed to the well being of the people of the City and State of New York in an exemplary manner. It would be most unfortunate if the Congress of the United States were to now require a "fire sale" of this entity based on policy which appears to be in urgent need of re-examination.

We would urge that those foundations which are free of grantor or grantor-related party control and which can demonstrate a bona fide commitment to the distribution of funds for charitable purposes at or above the mandatory payout rate set by section 4943 of the Code (presently 5%) should not be required to dispose of so-called "excess business holdings." We believe that such forced sales jeopardize the realization of the full value of the assets held, demoralize and frighten a loyal, longstanding work force, make it virtually impossible to continue what may be an unusual and historically significant business enterprise, and can destroy what may be the cornerstone of a local or regional economy. Therefore, we believe the Congress should eliminate the mandatory divestiture rules for "excess business holdings" under section 4943 of the Code.

The Altman Foundation, however, is faced with a rapidly approaching deadline under section 4943. Unless a set of general rules can be devised and approved soon, the Foundation will be forced to dispose of about half of its holdings in B. Altman & Co. before May 25, 1984. Therefore, we request that at a minimum, an across-the-board statutory 5 year extension of time for all private foundations required to dispose of excess business holdings be approved to provide the Congress with additional time in which to complete a thorough analysis of the underlying rationale for requiring such dispositions and to determine whether it is appropriate to require such dispositions without exception.

It is our firm belief that upon closer examination, the Congress will conclude that there are certain types of foundations which, for economic and general social reasons, ought to be permitted to continue to hold majority interests in operating businesses.

Finally, we believe one other area affecting private foundations is in need of review. That area involves the rules regarding termination of private foundation status under section 507 of the Code. Section 507 contains an elaborate set of complex rules governing terminations. In general, a private foundation may voluntarily terminate its private foundation status by notifying the Internal Revenue Service of its plan to terminate and by paying a tax equal to (1) its net asset value or (2) all of the income, estate and gift tax benefits plus interest received by the foundation and any of its substantial contributors since 1913, whichever is lesser. Additionally, private foundation status can be terminated by transferring the assets of the foundation to a public charity or by becoming eligible for public charity status. In each of these instances the termination tax may be abated under such circumstances.

There are certain circumstances where this procedure does not work well. In the case of the Altman Foundation, which is seventy-years old, assuming it is possible to accurately calculate the income tax benefit realized during each of the years of its existence, the imposition of interest on even relatively small tax benefits over the years could result in a termination tax liability in excess of total net assets. This could occur even though no tax deduction was claimed for the original contribution to the Foundation by Benjamin Altman and even though each year all of the net investment income received by the Foundation is distributed to charity. Such a result seems to us to be incongruous. Accordingly, we would propose that under circumstances similar to those just described, a flat "toll charge" equal to 25% of the net asset value of such a foundation be imposed to permit termination of private foundation status.

By imposing a fixed amount of tax on such a termination, the Federal government would immediately receive a portion of the value of the foundation, the tax-exempt entity would be converted to a taxable corporation and the corporation could continue to carry out its charitable purposes under the laws of the State of New York without jeopardizing the continued independent existence of B. Altman & Co., in accord with the wishes of its founder, Benjamin Altman.

We ask this Subcommittee and the full Ways and Means Committee to carefully examine the statutory provisions noted above which embody sweeping provisions aimed at curbing abuses. Unfortunately, these provisions fail to leave room for legitimate private foundations, that both prior to 1969 and thereafter have carefully operated in accordance with the law and provided substantial benefits to charity, to continue to function in the manner in which they were created to function. We believe that more than the tax laws are at issue. At issue is whether the Congress, on the one hand granting incentives for the preservation of historic properties, wishes to on the other hand, leave in place a statutory scheme which systematically forces the liquidation of "living" historic entities, such as the Altman Foundation and B. Altman & Co. which it has owned since 1913.

ATTACHMENT II

SUMMARY OF ALTMAN FOUNDATION CHARITABLE CONTRIBUTIONS SINCE 1913

Since its inception, the Altman Foundation has made contributions to various charitable recipients located within the State of New York. Contributions to organizations that operate outside New York are made with the stipulation that the funds received may not be used outside the State of New York. Set forth below is a brief list of some of the Altman Foundation's major charitable beneficiaries. The pages that follow show all charitable contributions (over $100) by the Foundation since it was created.

The Baby's Hospital of the City of New York 1928-1978	$ 385,500
Boy Scouts of America-New York Council 1917-1982	257,300
Calvery Hospital 1928-1982	247,500
Cardinal's Committee of the Laity, Archdiosese of New York 1920-1982	1,985,000
Casita Maria, Inc. 1944-1982	222,500
Children's Village, Inc. 1925-1982	141,725
Convent of the Sacred Heart 1950-1982	274,450
Federation of Jewish Philanthropies of New York 1919-1982	3,218,035
Federation of Protestant Welfare Agencies, Inc. 1942-1982	587,500
Madison Square Boy's Club, Inc. 1947-1980	165,000
Manhattanville College 1947-1982	201,230

The New York Public Library 1929-1982	124,500
New York University 1924-1982	$ 366,950
The New York Foundling Hospital 1918-1957	218,945
The New York Urban Coalition 1968-1982	172,500
St. Agnes Hospital 1931-1982	257,810
St. Clare's Hospital 1943-1980	345,000
St. Luke's-Roosevelt Hospital Center 1917-1982	639,800
St. Vincent's Hospital and Medical Center 1917-1982	684,200
United Cerebral Palsy of New York City 1950-1982	220,500
United Hospital Fund of New York 1923-1982	565,250
United Jewish Appeal 1950-1975	260,000
Visiting Nurses Service of New York 1920-1982	245,445

	Contribution Period	Total	
Actors Fund of America	1926	1,000.	
The Actors Theatre, Inc.	1926	1,000.	
Advisory Committee - Preservation of Washington Square	1928	250.	
John F. Ahearn Camp Fund	1927	100.	
Alfred University	1966	5,000.	
All Saints Episcopal Church Briarcliff Manor, New York	1967	5,000.	
Allies Bazaar	1917	250.	
Alumnae Association of the College of New Rochelle	1944	2,500.	
Alumnae of the Sacred Heart Charity Fund	1950	500.	
American Arbitration Association	1927	2,150.	
American Child Health Association	1921	5,000.	
	1923	2,500.	
	1924	2,500.	
	1925	2,500.	12,500.
American Federation of Arts	1926	176.	
American Heritage Foundation	1948	1,000.	
American Institute of Operatic Art	1925	200.	
American Jewish Commission	1919	100.	
American Jewish Congress	1932	1,500.	
American Legion New York County	1925-1931	1,800.	
American Mothers Committee	1952	500.	

	Contribution Period	Total	
American Red Cross-New York Chapter	1917-1961	137,000.	
American Relief Comm. for Hungarian Sufferers	1919	500.	
American Woman's Association, Inc.	1923	125.	
	1925	208.	
	1928	200.	
	1928	200.	733.
American Youth Hostels, Inc.	1949	5,000.	
	1950	5,000.	10,000.
America's Making Inc.	1921	10,000.	
The American Society for the Control of Cancer	1928	93.	
	1929	100.	193.
Archbishopric of New York	1962-1982	1,000,000.	
Architectural League of New York	1924-1928	1,270.	
Army Relief, Second Army Corp.	1942	500.	
Army Relief Society	1918	25.	
	1919	25.	
	1927	100.	
	1928	100.	
	1929	100.	
	1930	100.	450.
Art Alliance New York City	1927	100.	
Arthritis and Rheumatism Foundation	1950	5,000.	
	1951	5,000.	10,000.
Art in America and Elsewhere	1919	100.	
	1921	100.	
	1923	100.	
	1924	100.	
	1925	100.	
	1926	100.	
	1927	100.	
	1928	100.	
	1929	100.	
	1930	100.	
	1931	100.	1,100.

	Contribution Period	Total	
The Art News	1930	1,950.	
Art in Trades Club	1926	500.	
Arts Council of the City of New York	1927	500.	
	1928	500.	
	1929	5,500.	
	1930	500.	7,000.
Association for the Aid of Crippled Children	1926	100.	
Association for Improving Conditions of the Poor	1917	2,500.	
	1919	1,000.	
	1921	1,000.	
	1922	150.	
	1923	2,500.	
	1924	12,500.	
	1925	10,000.	
	1926	10,000.	
	1927	10,000.	
	1928	10,000.	
	1929	11,000.	
	1930	10,000.	
	1931	10,000.	
	1932	5,000.	
	1933	5,000.	100,650.
Association to Promote Proper Housing for Girls, Inc.	1927	250.	
	1928	250.	
	1929	250.	
	1930	250.	
	1931	250.	1,250
American Guard - Summer Camp	1922	100.	

	Contribution Period	Total	
The Babies Hospital of the City of New York	1928-1978	385,500.	
Barnard College - Summer School for Workers in Industry	1927	1,000.	
	1928	1,000.	
	1929	2,000.	
	1931	1,000.	5,000.
Bellevue Hospital	1940-1971	40,450.	
Berkshire Industrial Farm, Inc.	1925	1,000.	
Canaan, New York	1926	1,000.	
	1927	1,000.	
	1928	1,000.	
	1929	1,000.	
	1930	1,000.	
	1931	1,000.	
	1932	250.	7,250.
Beth Abraham Home for Incurables	1924	500.	
	1927	100.	
	1928	100.	700.
Beth David Hospital	1929	100.	
Beth Israel Hospital	1929	10,000.	
	1930	15,000.	
	1953	5,000.	
	1974	5,000.	35,000.
Big Brothers, Inc. of New York City	1966-1982	66,500.	
The Big Sisters, Inc.	1981	2,500.	
	1982	2,500.	5,000.
Blind Industrial Workers Association	1928	25.	
	1929	25.	
	1930	25.	
	1931	25.	100.
Blue Bird Camp	1925	500.	
Upper Twin Lakes, Central Valley, New York	1926	500.	
	1927	500.	
	1928	1,000.	
	1929	1,000.	
	1930	1,000.	
	1931	1,000.	
	1932	500.	
	1933	500.	
	1944	1,000.	7,500.

	Contribution Period	Total	
Boys Club of New York	1926	1,000.	
	1959	5,000.	
	1965	5,000.	
	1966	5,000.	
	1968	5,000.	
	1969	5,000.	
	1970	5,000.	
	1971	5,000.	
	1972	5,000.	
	1973	5,000.	
	1974	5,000.	
	1975	3,000.	
	1976	3,000.	
	1977	3,000.	
	1978	2,500.	
	1979	2,500.	
	1980	2,500.	
	1981	2,500.	
	1982	2,500.	72,500.
Boy Scouts of America-New York Council	1917-1982	257,300.	
Nassau County	1949	2,500.	
Boys Welcome Hall Association	1926	250.	
	1927	250.	
	1928	250.	
	1929	250.	1,000.
Briarcliff College	1964	5,000.	
	1966	2,500.	7,500.
Briarcliff Congregational Church Briarcliff, New York	1955	1,000.	
	1956	1,000.	
	1959	500.	2,500.
Briarcliff Nursery School Briarcliff, New York	1955	1,500.	
Broad Street Hospital	1927	150.	
	1928	150.	
	1929	25.	325.
Brooklyn Children's Fresh Air Camp Association	1928	100.	
Brooklyn-Cumberland Medical Center	1968	25,000.	
Brooklyn Federation of Jewish Charities	1918-1934	55,675.	
Brooklyn Hebrew Orphan Asylum	1931	500.	

	Contribution Period	Total	
Brooklyn Institute of Arts and Sciences	1969	1,500.	
	1971	1,500.	
	1972	1,500.	
	1973	1,500.	
	1974	1,500.	7,500.
Brother Baldwin Scholarship Fund	1928	250.	
John S. Burke Catholic High School Goshen, New York	1967	5,000.	
The Burke Rehabilitation Center White Plains, New York	1971	10,000.	
Blessed Sacrament Church	1929	100.	

	Contribution Period	Total	
Calvert Associates	1930	250.	
Calvary Hospital	1928-1982	247,500.	
Camp Fire Girls (Brooklyn and Manhattan Councils)	1927-1934	7,875.	
Camp Ramapo	1926	1,000.	
Cardinal's Committee of the Laity, Archdiocese of New York	1920-1982	1,985,000.	
The Cardinal's Educational Fund	1960	25,000.	
Cardinal Hayes Convalescent Home	1949	3,000.	
Cardinal Hayes Fund	1924	5,000.	
Cardinal Mercier Testimonial	1919	2,000.	
Cardinal Spellman's Service Men's Club	1959	5,000.	
Cardinal Spellman's Special Education Program	1965-1976	55,000.	
Carmelite Monastery Fund	1942	1,600.	
	1945	1,000.	
	1947	5,000.	
	1949	1,250.	8,850.
The Carroll Club, Inc.	1929-1959	97,913.	
Casita Maria, Inc.	1944-1982	222,500.	
The Cathedral of St. John the Divine	1925	50,000.	
	1926	250.	50,250.
Catholic Actors Guild	1921-1956	4,700.	
Catholic Big Brothers	1974-1982	17,500.	

	Contribution Period	Total	
Catholic Big Sisters	1926-1982	60,400.	
Catholic Boys Brigade	1927	250.	
	1928	250.	
	1929	250.	
	1930	500.	
	1931	500.	1,750.
Catholic Boys Club of the Archdiocese of New York	1925	100.	
	1926	300.	
	1929	100.	
	1933	100.	
	1934	50.	650.
Catholic Camp Association	1924	100.	
	1925	100.	
	1926	1,000.	1,200.
Catholic Center for the Blind	1919-1945	22,905.	
The Catholic Center at New York University	1974	2,500.	
Catholic Charities-Diocese of Brooklyn	1945-1982	163,500.	
Catholic Charities Special Fund for Homeless People	1981	10,000.	
Catholic Home Bureau	1981	10,000.	
	1982	10,000.	20,000.
Catholic Interracial Council of New York, Inc.	1944-1982	74,580.	
Catholic War Veterans, Inc.	1943	175.	
Catholic Writers Guild	1923-1957	29,608.	
Catholic Youth Organization	1944	5,000.	
	1955	5,000.	
	1957	5,000.	15,000.
Central Park - Pony Track	1956	26,949.	
New York Catholic War Fund	1918	1,450.	

	Contribution Period	Total	
Centre Symphony Society	1943-1949	5,250.	
The Charity Organization Society	1925-1931	65,000.	
Charity Organization Society of the City of Yonkers	1926	250.	
	1927	250.	
	1928	250.	
	1929	250.	
	1930	250.	
	1931	250.	1,500.
Child Adoption Service	1965	5,000.	
	1966	5,000.	10,000.
Child Education Foundation	1930	5,000.	
Child Placing Agency	1924-1943	21,270.	
Child Service League, Inc.	1961	1,000.	
	1962	1,000.	
	1963	1,000.	
	1964	1,000.	
	1965	1,000.	5,000.
Child Study Association of America, Inc.	1922	500.	
	1926	500.	
	1928	1,000.	2,000.
Child Welfare Committee of America	1924	1,000.	
	1926	500.	
	1927	10,000.	
	1928	5,000.	
	1929	1,000.	
	1930	1,100.	18,600.
Children's Welfare Federation of New York City	1923-1934	20,500.	
Christ the King Seminary	1956	1,000.	
Church of the Assumption	1946	500.	
The Children's Village, Inc.	1925-1982	141,725.	
Cities Census Committee, Inc.	1928	1,000.	

	Contribution Period	Total	
Citizens Committee to Keep New York Clean, Inc.	1956-1969	62,500.	
The Citizens Family Welfare Committee of New York City	1933	10,025.	
	1934	404.	10,429.
Citizens Planning Council, Inc.	1949	11,500.	
	1950	11,500.	23,000.
City Amateur Symphony Orchestra	1942-1955	36,500.	
City Center of Music and Drama, Inc.	1943	5,000.	
	1944	5,000.	
	1945	5,000.	15,000.
City College of New York	1922-1947	36,450.	
Clear Pool Camp, Inc.	1972	2,000.	
	1973	2,000.	
	1974	2,000.	
	1976	2,000.	
	1977	2,000.	
	1979	2,000.	
	1980	2,000.	
	1981	2,000.	
	1982	2,000.	18,000.
John A. Coleman Catholic High School Kingston, New York	1967	5,000.	
College of Mount Saint Vincent	1965-1982	595,000.	
College of New Rochelle	1965	5,000.	
	1966	5,000.	10,000.
The Collegiate School	1947	5,000.	
The Columbia Presbyterian Medical Center Fund, Inc.	1961	25,000.	
Columbia University	1921	250.	
	1929	100.	
	1947	250.	
	1952	2,500.	
	1961	5,000.	8,100.
Committee on the Cost of Public Education	1933	1,800.	

	Contribution Period	Total	
Committee of Fourteen	1927	3,000.	
	1928	3,000.	
	1929	3,000.	
	1930	5,000.	
	1931	1,500.	15,500.
Committee of Twenty on Street and Outdoor Cleanliness	1929	15,000.	
	1930	15,000.	
	1931	5,000.	
	1932	1,200.	36,200.
Community Council of Greater New York	1926	200.	
	1927	250.	
	1928	2,750.	
	1929	2,500.	
	1930	2,500.	
	1931	2,500.	
	1973	5,000.	
	1976	5,000.	
	1977	5,000.	
	1978	5,000.	
	1979	5,000.	
	1980	5,000.	40,700.
Community Service Society	1942-1974	160,000.	
Congress House	1934	188.	
	1938	180.	
	1939	185.	
	1942	790.	1,343.
Convent of the Sacred Heart	1950-1982	274,450.	
Convent of Mary Reparatrix	1941	690.	
Cooperative Committee of Big Sisters	1928	2,500.	
	1929	200.	
	1930	200.	2,900.
The Cooper Union for the Advancement of Science and Art	1958	10,000.	
Council on Adult Education for the Foreign Born	1928	5,000.	
	1929	5,000.	
	1931	5,000.	15,000.
Council Child Development Center	1955	2,500.	

	Contribution Period	Total	
Council for Human Rights	1943	2,500.	
Council of Jewish Women	1918	250.	
College of the City of New York Division of Vocational Guidance	1929	2,250.	
	1930	3,000.	
	1931	3,000.	
	1932	750.	9,000.
Court Officers Mutual Benefit Association	1927	100.	
Florence Crittenton League	1946	10,000.	
	1948	5,000.	
	1949	5,000.	
	1950	5,000.	25,000.
Community Fund - Scarsdale, New York	1936	100.	
Congregation B'nai Israel of Letchworth Village - Freeport, Long Island, N. Y.	1968	1,000.	
Daughters of Ohio in New York City	1926	100.	
The Deborah Relief Society of New York	1927	150.	
The Dependents Fund - 22nd Street Fire 1966	1966	6,000.	
Department of Parks, Highbridge Park Carillon	1958	25,700.	
Dominican Academy	1944-1982	167,272.	
Dominican Camp	1942-1983	189,000.	
Dominican Sisters of the Sick Poor	1919-1982	113,210.	
The Dug Out Inc.	1927	50.	
	1928	50.	100.

	Contribution Period	Total	
East Harlem Health Center	1925-1934	15,000.	
East Side Orphan Home & Kindergarten	1928	100.	
East Side House	1923-1982	9,350.	
East Side Kiddies Christmas Fund	1926	200.	
	1927	200.	400.
East Side Kindergarten & Infant Home	1929	100.	
	1930	100.	
	1932	100.	300.
Education Alliance	1927	2,500.	
	1928	2,500.	
	1929	2,500.	
	1966	5,000	12,500.
Educational Foundation of the Fashion Industries - Fashion Institute of Technology	1948	4,000.	
	1968	30,000.	
	1973	15,000.	
	1978	20,000.	69,000.
Dan Edwards Fund	1929	100.	
Edwards-Perin School	1942	1,500.	
Emanuel League	1928	100.	
	1929	152.	
	1930	100.	352.
Emergency Employment Committee	1930	3,035.	
	1931	75,000.	
	1932	15,010.	
	1933	390.	93.435.

	Contribution Period	Total	
Empire State Legionaire	1925	300.	
Employment Bureau for the Handicapped	1925	2,500.	
	1927	2,500.	
	1928	2,500.	
	1929	2,500.	
	1930	2,500.	
	1931	1,500.	14,000.
Engineering Economics Foundation	1926	1,500.	
English Speaking Union	1923	100.	
Episcopal Actors Guild	1925	250.	
	1927	250.	
	1929	100.	
	1930	100.	700.
Episcopal Charities of Long Island	1966-1982	85,000.	
Equity Players Inc.	1923	500.	
Euphrasian Residence	1946	1,000.	
Eymard Seminary-Eymard Preparatory School Hyde Park, New York	1944-1966	88,000.	

	Contribution Period	Total	
Fashion Institute of Technology	1948	4,000.	
	1968	5,000.	
	1973	15,000.	24,000.
Fathers of the Blessed Sacrament	1950	6,740.	
Federal Council of the Churches of Christ in America	1926	10,000.	
	1928	5,000.	
	1929	5,000.	
	1933	500.	
	1934	500.	
	1935	500.	
	1937	500.	22,000.
United Bldg. Fund Campaign of Federated Jewish Institutions	1919	5,000.	
	1921	10,000.	
	1922	5,000.	20,000.
Federation of French Veterans of the Great War Inc. NYC.	1926	250.	
Federation of Jewish Philanthropies of New York	1919-1982	3,218,035.	
Federation of Protestant Welfare Agencies Inc.	1942-1982	587,500.	
Fifteenth Precinct Coordinating Council	1945	500.	
Fifth Avenue Community Center of Harlem	1979	2,500.	
	1980	2,500.	
	1981	2,500.	
	1982	2,500.	10,000.

	Contribution Period	Total	
Fifth Avenue Hospital	1921	2,500.	
	1922	50.	
	1923	400.	
	1924	5,000.	7,950.
The Fighting 69th Fund	1943	110.	
Fire Department Emergency Fund Drive	1925	150.	
The Fire Square Club Inc. NYC	1927	100.	
	1928	100.	200.
First Baptist Church of Phoenix N.Y.	1921	250.	
The First Institute of Podiatry	1922	100.	
Flower Hospital	1920	1,000.	
	1927	600.	
	1928	250.	1,850.
Fordham Preparatory School	1968	5,000.	
	1972	5,000.	
	1978	10,000.	
	1979	5,000.	25,000.
Fordham School of Social Service -	1949	500.	
	1951	500.	
	1953	500.	1,500.
Fordham University	1921-1980	89,129.	

	Contribution Period	Total	
Foreign Language Information Service	1925	5,000.	
	1926	5,000.	
	1927	5,000.	15,000.
Forty-Second St. Beth David Hospital	1956	10,000.	
Foster Mothers Assn. of America	1928	100.	
Fountain House	1965	2,500.	
	1966	2,500.	
	1967	2,500.	
	1968	2,500.	
	1969	2,500.	
	1970	2,500.	
	1971	2,500.	
	1972	2,500.	
	1973	2,500.	
	1974	2,500.	25,000.
Franciscan Friars of the Atonement	1947	1,000.	
Greymoor, New York	1948	2,500.	3,500.
Freedom Institute	1982	2,500.	
Free Milk Fund for Babies	1922-1960	6,460.	
French-American Opera Comique Co. Inc.	1926	1,000.	
French and Polyclinic Medical School and Health Center	1923-1972	74,950.	
Frick Art Reference Library	1926	122.	
Friends Church of Chappaqua, N. Y.	1930	250.	
Full Circle Associates	1969	5,000.	
	1970	5,000.	
	1971	5,000.	
	1973	5,000.	20,000.
Fund for Needy Children	1928	500.	

	Contribution Period	Total	
Albert Gallatin Memorial Committee	1929	500.	
Genesis Hebrew Center of Crestwood and Tuckahoe, New York	1946	500.	
Georgia Warm Springs Foundation	1929	10,000.	
	1930	10,000.	
	1931	10,000.	
	1944	10,000.	
	1946	10,000.	
	1947	10,000.	
	1948	10,000.	
	1949	10,000.	
	1950	10,000.	
	1951	10,000.	
	1953	10,000.	110,000.
Girl Scout Council of Greater New York	1920-1982	127,400.	
Girls Home Club	1928	1,000.	
	1931	500.	1,500.
Girls Service League of America	1923	1,000.	
	1925	1,000.	
	1926	1,000.	
	1927	1,000.	
	1928	1,000.	
	1929	1,000.	
	1930	1,000.	
	1931	1,000.	
	1932	500.	
	1934	500.	9,000.
Goddard Riverside Community Center	1933-1979	40,525.	
Goldman Concerts Band	1923	250.	
Good Samaritan Hospital Suffern, New York	1958	2,500.	
	1966	5,000.	
	1970	5,000.	12,500.
Goodwill Industries of New York	1948	1,000.	
	1953	2,500.	
	1967	5,000.	8,500.
Edwin Gould Services for Children	1981	2,500.	

	Contribution Period	Total	
Gouverneur Hospital	1926	1,000.	
	1927	1,000.	
	1928	1,000.	
	1929	1,000.	
	1931	1,000.	5,000.
Grand Street Boys Association	1925-1942	1,143.	
Grand Street Settlement	1927	150.	
	1968	10,000.	10,150.
Greater New York Federation of Churches	1929	7,500.	
	1930	7,500.	
	1931	5,000.	
	1943	3,500.	
	1944	5,000.	28,500.
Greater New York Interfaith Committee	1930	250.	
Greater New York Fund	1920	10,000.	
	1921	10,000.	
	1939	168.	
	1949	12,000.	
	1950	12,000.	
	1951	12,000.	
	1952	12,000.	68,168.
Greenwich House	1925	2,500.	
	1926	1,000.	
	1927	2,500.	
	1928	1,500.	
	1929	1,500.	
	1930	1,500.	
	1931	1,500.	12,000.
Guild of the Infant Saviour	1929-1975	39,000.	

	Contribution Period	Total	
Hamilton-Madison House	1968	2,000.	
	1969	2,000.	
	1970	2,000.	
	1971	2,000.	
	1972	2,000.	
	1973	2,000.	
	1974	2,000.	
	1975	2,000.	
	1976	2,000.	
	1977	2,000.	
	1978	2,000.	
	1979	2,000.	
	1980	2,000.	
	1981	2,000.	
	1982	2,000.	30,000.
Hand Work Center	1925	100.	
Hartman-Homecrest	1923-1961	66,600.	
Hebrew Kindergarten & Orphan Home	1927	150.	
Hebrew National Orphan Home	1925	1,000.	
Hebrew Orphan Asylum	1914	25.	
	1915	25.	
	1916	25.	
	1925	2,500.	
	1929	296.	
	1932	54.	2,925.
Hebrew Orphan Home	1928	500.	
Hebrew Technical School for Girls	1914	100.	
	1915	100.	
	1916	100.	300.

	Contribution Period	Total	
Henry Street Settlement	1945-1977	48,000.	
Mrs. Alfred Hess - To Provide Breakfast for Undernourished Children	1931	750.	
	1932	1,000.	1,750.
Society of the Hillside Hospital	1928	2,500.	
	1929	2,500.	
	1930	2,500.	
	1931	2,500.	
	1942	2,500.	
	1933	20.	
	1943	1,000.	13,520.
School of the Holy Child	1944	1,000.	
Church of the Holy Innocents	1925	20.	
	1935	10.	
	1936	25.	
	1937	100.	
	1938	100.	
	1939	100.	
	1940	100.	
	1941	100.	
	1944	1,200.	
	1950	1,500.	3,255.
Holy Name Center for Homeless Men	1926	100.	
	1927	100.	
	1928	5,000.	
	1940	25.	
	1943	30.	
	1944	30.	5,285.
Home for the Aged of the Little Sisters of the Poor	1962	2,500.	
Home & Hospital of Daughters of Jacob	1927-1962	10,100.	

	Contribution Period	Total	
Hospital for Joint Diseases	1924	5,000.	
Hospital for Special Surgery	1979	5,000.	
	1980	5,000.	
	1981	5,000.	
	1982	5,000.	20,000.
Hospital Occupation Committee	1922	1,000.	
	1923	1,000.	
	1924	1,000.	
	1925	1,000.	
	1926	1,000.	
	1927	1,000.	
	1928	1,000.	
	1929	1,000.	
	1930	1,000.	
	1931	1,000.	10,000.
House of the Good Shepherd	1928	103.	
Hudson Guild	1921	100.	
	1923	600.	
	1924	100.	
	1925	600.	
	1926	1,100.	
	1927	1,100.	
	1928	100.	
	1929	5,100.	
	1930	5,100.	
	1931	2,500.	16,400.
Charles Evans Hughes High School	1930-1956	1,275.	
Hunter College	1925	1,000.	
	1939	15.	
	1944	1,000.	
	1945	1,000.	
	1946	1,000.	
	1948	1,000.	5,015.
Human Resources Center Albertson, Long Island, N.Y.	1964-1982	112,500.	

	Contribution Period	Total	
Immaculate Heart of Mary Church Scarsdale, New York	1944	100.	
Church of the Incarnation	1965	5,000.	
Independence Day Celebration	1918	100.	
Industrial Health Cardiac Shop	1931	1,000.	
Institutional Synagogue	1925	300.	
	1926	300.	
	1927	324.	
	1928	325.	
	1929	330.	
	1930	330.	
	1931	321.	
	1932	300.	
	1933	300.	
	1934	300.	3,130.
The Institute of Reconstructive Plastic Surgery	1967	15,000.	
	1970	5,000.	
	1971	5,000.	
	1972	5,000.	
	1973	5,000.	
	1974	5,000.	
	1975	3,000.	
	1976	5,000.	
	1977	3,000.	
	1978	2,500.	53,500.
Interfaith Committee on Released Time Religious Education, Inc.	1944-1983	206,500.	
International Center for the Disabled	1954-1982	87,000.	
Inter-racial Council	1919	250.	
Iona Grammar School New Rochelle, New York	1955	2,500.	
Irish Christian Brothers	1946	500.	
Stanley M. Isaacs Neighborhood Center, Inc.	1974	3,000.	

	Contribution Period		Total	
Irvington House (formerly Mineola Home for Cardiac Children)	1921		1,000.	
	1922		1,000.	
	1924		1,000.	
	1925		1,000.	
	1927		1,000.	
	1928		1,000.	
	1929		1,000.	
	1930		1,000.	
	1930	Building Fund	5,000.	
	1932		500.	
	1933		500.	
	1945		1,500.	15,500.
Italian Hospital	1927		2,750.	
	1928		300.	
	1929		100.	3,150.
Italian Welfare League, Inc.-New York City	1926		100.	

	Contribution Period	Total	
Jesuit Program for Living and Learning of New York, Inc.	1981	5,000.	
	1982	5,000.	10,000.
Jewish Committee on Scouting	1929	2,500.	
Jewish Conciliation Board of America	1950-1977	110,500.	
Jewish Conciliation Court of America	1933	500.	
Jewish Education Association	1923	500.	
	1925	25,000.	
	1931	15,000.	
	1932	5,000.	45,500.
The Jewish Maternity Hospital	1925	250.	
Jewish Memorial Hospital	1964	5,000.	
	1965	5,000.	
	1966	5,000.	
	1967	5,000.	20,000.
Jewish Publication Society	1927	100.	
The Jewish Theatrical Guild of America	1925	500.	
Jewish Theological Seminary	1925	10,000.	
Jewish Tribune	1926	1,000.	
Jewish War Relief Committee (New York Campaign)	1917	10,000.	
Jewish War Veterans	1930	150.	
Jewish Widows of the Board of Child Welfare	1926	100.	
New York Campaign for Jewish War Sufferers	1922	10,000.	

	Contribution Period	Total	
Josephine Home, Inc.	1923	500.	
	1924	500.	
	1926	650.	
	1927	500.	
	1928	500.	
	1930	1,000.	
	1931	500.	
	1935	500.	
	1936	500.	5,150.
Judson Health Center	1925	1,000.	
The Juilliard School	1976	5,000.	
Kips Bay Boys' Club, Inc.	1954-1982	59,000.	
Knickerbocker Hospital	1925	2,500.	
	1926	1,000.	
	1928	1,000.	
	1929	1,000.	5,500.
Knights of Columbus	1918-1942	6,476.	

	Contribution Period	Total	
The Ladies of Charity of the Catholic Charities	1942	1,000.	
Ladycliff College Highland Falls, New York	1964	10,000.	
	1966	10,000.	
	1969	10,000.	
	1971	10,000.	
	1972	10,000.	
	1973	10,000.	
	1974	10,000.	70,000.
The John LaFarge Institute	1964	5,000.	
	1965	5,000.	
	1966	5,000.	15,000.
The Lambs	1928	150.	
Larchmont-Mamaroneck Committee on Family and Youth	1968	1,500.	
	1969	1,500.	3,000.
Lavelle School for the Blind	1945	5,000.	
	1954	125.	
	1963	5,000.	10,125.
Lawrence Hospital Bronxville, New York	1948	5,000.	
	1965	5,000.	10,000.
St. Lawrence University	1926	1,080.	
The League of Mothers Club	1926	1,000.	
	1928	1,000.	
	1929	1,000.	3,000.

	Contribution Period	Total	
Leake and Watts Orphan House	1925	1,000.	
	1926	1,000.	
	1927	1,000.	
	1928	1,000.	4,000.
Lenox Hill Hospital	1929	10,000.	
Leonx Hill Neighborhood Assn.	1921-1982	38,900.	
Lexington School for the Deaf	1947	5,000.	
	1971	5,000.	
	1973	5,000.	
	1974	5,000.	20,000.
Lincoln Center for the Performing Arts. Inc.	1959-1982	102,500.	
Lincoln Hall Lincolndale, New York	1962	5,000.	
	1963	2,500.	7,500.
Little Sisters of the Poor	1950	1,854.	
	1953	1,500.	3,354.
Little Theatre Opera Co.	1929	100.	
Long Island College of Medicine	1947	5,000.	
	1948	5,000.	10,000.
The Long Island Jewish Hospital	1966	5,000.	
Lutheran Hospital of Manhattan	1926	5,000.	
Loyola School	1955-1981	40,000.	

	Contribution Period	Total	
Madison House Society	1930	1,000.	
Madison Square Boys' Club, Inc.	1947-1980	165,000.	
Madonna House	1925-1939	6,900.	
Manhattan College	1944	5,000.	
	1951	10,000.	
	1955	5,000.	
	1975	25,000.	45,000.
Manhattanville College	1947-1982	201,230.	
Manhattan Eye, Ear & Throat Hospital	1941	5,000.	
	1942	7,500.	
	1947	2,500.	
	1951	5,000.	
	1962	5,000.	25,000.
Manhattanville Community Centers, Inc.	1959	5,000.	
	1960	5,000.	
	1961	5,000.	
	1962	5,000.	20,000.
Horace Mann School	1927	10,000.	
Greater New York Chapter-March of Dimes	1969	1,000.	
The Maryknoll Fathers	1936	150.	
Maryknoll, New York	1967	4,000.	4,150.

	Contribution Period	Total	
Marymount College Tarrytown, New York	1945	658.	
	1946	1,382.	
	1947	660.	
	1967	5,000.	7,700.
Marymount Manhattan College	1970-1982	49,000.	
Marymount School of New York	1976	1,000.	
	1978	2,000.	
	1980	4,000.	
	1981	3,000.	10,000.
Maternity Center Association	1923-1933	30,325.	
Mayor's Commission on National Defense	1918	500.	
Mayor's Committee on Unity	1944	2,500.	
	1945	2,500.	
	1946	2,500.	
	1948	2,500.	
	1950	6,000.	16,000.
McMahon Memorial Temporary Shelter for Children	1930-1952	12,126.	
The Medford Sanatorium Committee	1922	500.	
	1923	500.	1,000.
Medical Society of the County of New York	1929	1,000.	
Memorial Hospital	1946	10,000.	
The Metropolitan Museum of Art	1923	3,500.	
	1926	5,160.	
	1956	75,000.	

	Contribution Period	Total	
The Metropolitan Museum of Art (cont'd.)	1962	25,000.	
	1968	3,000.	
	1969	1,000.	112,660.
Metropolitan Opera Assn. Inc.	1942-1970	46,537.	
Metropolitan Opera Fund	1940	2,500.	
	1944	2,500.	
	1951	2,500.	7,500.
Middletown Hebrew Assn. for the Hebrew School	1946	500.	
Military Athletic League of New York	1927	100.	
	1928	100.	200.
Misericordia Hospital	1926	2,000.	
	1927	2,500.	
	1928	3,500.	
	1929	4,000.	
	1930	4,000.	
	1931	2,500.	
	1932	750.	
	1958	10,000.	29,250.
Montefiore Hospital	1927	25,000.	
	1928	25,000.	
	1960	25,000.	
	1964	25,000.	100,000.
Monroe House	1924	100.	
The Pierpont Morgan Library	1960	10,000.	
	1962	2,000.	
	1981	5,000.	
	1982	5,000.	22,000.

	Contribution Period	Total	
Montifiore Home	1914	100.	
	1915	100.	
	1916	100.	300.
Mt. Carmel Baptist Church Stormville, New York	1968	5,000.	
Mount Sinai Hospital	1924-1960	180,500.	
Mulberry Community House	1932	250.	
	1933	500.	750.
Museum of the City of New York	1928	25,000.	
	1929	50,000.	
	1930	50,000.	
	1938	50.	
	1965	5,000.	130,050.
Museum of French Art	1925	1,000.	
	1929	50.	1,050.

	Contribution Period	Total	
Nassau Hospital Building Fund	1962	5,000.	
National Aid to Visually Handicapped Greater New York Chapter	1965	2,500.	
National Child Stage Association	1926	200.	
	1927	200.	400.
National Child Welfare Association (Knighthood of Youth)	1926	3,000.	
	1928.	5,000.	
	1929	7,500.	
	1930	15,000.	
	1931	12,500.	
	1932	1,000.	
	1933	3,500.	
	1940	2,500.	
Parents Consultation Bureau:	1940	2,500.	52,500.
National Civic Federation	1918	1,000.	
	1927	500.	
	1928	500.	
	1929	500.	
	1931	500.	3,000.
National Committee for Mental Hygiene	1925	10,000.	
	1926	5,000.	
	1928	5,000.	
	1929	10,000.	
	1930	10,000.	40,000.
National Committee on Housing	1945	2,500.	
	1946	1,500.	4,000.
National Committee on Prisons and Prison Labor	1930	1,000.	
National Conference of Jews and Christians	1929	100.	
	1930	100.	200.
National Crime Commission New York State	1926	5,000.	
	1930	5,000.	10,000.
National Resuscitation Society, Inc.	1960	1,500.	
	1961	1,500.	3,000.
The National Stage Woman's Exchange	1923	250.	

	Contribution Period	Total	
National Urban League, Inc.	1920-1982	229,000.	
Nazareth Day Nursery	1930-1941	220.	
The Needlework Guild of America, Inc.	1925	500.	
	1926	500.	
	1927	500.	
	1928	500.	
	1929	500.	
	1930	500.	
	1931	500.	
	1932	400.	
	1933	400.	
	1943	1,000.	
	1944	500.	
	1945	500.	
	1946	500.	6,800.
Neighborhood Circle	1920	100.	
Neighborhood Committee for Asphalt Green	1977	1,000.	
Neighborhood Teachers Association	1925	1,000.	
	1926	1,000.	
	1927	2,000.	
	1928	1,000.	
	1929	2,000.	
	1930	2,000.	9,000.
The Neurological Institute of New York	1926	2,500.	
	1927	3,600.	
	1928	3,600.	
	1929	3,600.	
	1930	7,600.	20,900.
New Rochelle Hospital	1944	5,000.	
New Rochelle, New York	1945	5,000.	10,000.
New York Academy of Medicine	1922	1,000.	
	1923	1,000.	
	1924	1,000.	
	1925	1,000.	
	1926	11,000.	
	1929	1,000.	
	1930	16,000.	
	1931	7,500.	
	1935	50,000.	
	1958	2,500.	
	1960	2,500.	
	1965	1,000.	95,500.

	Contribution Period	Total	
New York Philharmonic	1967	2,500.	
	1969	2,500.	
	1970	2,500.	7,500.
New York Plant and Flower Guild	1926-1960	2,175.	
New York Public Library	1929-1982	124,500.	
New York Safety Committee	1928	100.	
New York Section-National Council of Jewish Women	1924	5,000.	
	1925	5,000.	
	1926	5,000.	
	1927	5,000.	
	1928	10,000.	
	1929	10,000.	
	1930	7,000.	
	1931	6,500.	
	1932	2,000.	
	1933	1,000.	
	1934	2,000.	
	1955	2,000.	60,500.
New York Shakespeare Festival	1965	1,000.	
New York Smith College Club	1919	100.	
	1937	100.	
	1938	100.	
	1939	100.	
	1940	100.	500.
New York Society for the Prevention of Cruelty to Children	1923	1,000.	
New York Tuberculosis Association, Inc.	1926-1934	8,217.	
New York University	1924-1982	366,950.	

	Contribution Period	Total	
New York Adult Education Council	1943	2,500.	
	1945	5,000.	
	1946	2,500.	
	1947	2,500.	
	1948	2,500.	
	1949	2,500.	
	1950	2,500.	
	1951	2,500.	
	1952	2,500.	
	1953	7,500.	
	1954	2,500.	
	1955	2,500.	
	1956	2,500.	
	1957	2,500.	
	1958	2,500.	
	1959	2,500.	
	1960	2,500.	
	1961	2,500.	52,500.
New York American Christmas Relief Fund, Inc.	1923	100.	
	1924	100.	
	1925	100.	
	1926	100.	
	1927	100.	
	1928	100.	
	1929	100.	
	1930	100.	800.
New York American Playground Fund	1926	300.	
	1927	300.	
	1929	600.	1,200.
New York Archdiocese Union	1949	4,878.	
The New York Association for the Blind	1926	1,000.	
	1927	1,000.	
	1928	58.	
	1929	1,000.	
	1930	1,500.	
	1942	1,000.	
	1943	1,000.	
	1944	1,000.	
	1945	1,000.	
	1946	1,000.	
	1947	1,000.	
	1948	1,000.	
	1950	1,000.	12,558.

	Contribution Period	Total	
New York Child Labor Committee	1930	1,000.	
New York City Committee on Mental Hygiene	1928	2,500.	
	1929	2,500.	5,000.
New York City Mission Society	1964	5,000.	
	1965	5,000.	
	1968	5,000.	
	1969	5,000.	
	1970	5,000.	
	1971	5,000.	
	1972	5,000.	
	1973	5,000.	
	1974	5,000.	
	1976	5,000.	
	1977	5,000.	
	1979	5,000.	
	1980	5,000.	
	1981	5,000.	70,000.
New York City School Volunteer Program, Inc.	1979	2,500.	
	1980	2,500.	
	1981	2,500.	
	1982	2,500.	10,000.
New York City Visiting Committee	1925	2,000.	
	1926	2,575.	
	1927	2,500.	
	1928	2,500.	
	1929	2,500.	
	1930	2,500.	
	1931	2,500.	17,075.
New York Counbil on Alcoholism, Inc.	1962	5,000.	
	1967	5,000.	
	1968	7,500.	
	1969	7,500.	
	1970	5,000.	
	1971	5,000.	
	1973	5,000.	
	1974	5,000.	
	1975	5,000.	
	1976	5,000.	
	1977	5,000.	
	1978	5,000.	
	1979	5,000.	
	1980	5,000.	75,000.
New York Diabetes Association	1966	2,500.	
	1967	2,500.	5,000.

	Contribution Period	Total	
The New York Diet Kitchen Association	1926	1,000.	
	1927	1,000.	
	1928	1,000.	
	1929	1,000.	
	1930	1,000.	
	1931	1,000.	6,000.
Auxiliary New York Fire Department	1919	150.	
New York Foundling Hospital	1918-1957	218,945.	
The New York Friends of Boys	1923	300.	
New York Friends Group (East Harlem Block Schools)	1966	2,000.	
The New York Genealogical and Biographical Society	1924	250.	
	1926	250.	
	1927	250.	
	1928	500.	
	1929	500.	
	1930	500.	2,250.
New York Guild for Jewish Blind	1923	1,000.	
	1924	1,000.	
	1925	1,000.	
	1926	1,000.	
	1927	1,000.	
	1928	1,000.	
	1929	1,000.	
	1931	1,000.	
	1932	500.	
	1933	250.	
	1934	100.	
	1939	100.	8,950.
New York Heart Association	1923	3,750.	
	1924	2,000.	
	1925	2,500.	8,250.
The New York Hospital - Cornell Medical Center	1948	2,500.	
	1949	2,500.	
	1950	2,500.	
	1952	2,500.	
	1961	15,000.	
	1962	15,000.	
	1963	5,000.	
	1964	5,000.	
	1965	15,000.	65,000.

	Contribution Period	Total	
The New York Infirmary-Beekman Downtown Hospital	1946	2,500.	
	1964	1,000.	
	1965	1,000.	
	1966	1,000.	
	1967	1,000.	
	1968	1,000.	
	1969	1,000.	
	1970	1,000.	
	1971	1,000.	
	1972	1,000.	
	1973	1,000.	
	1974	1,000.	
	1975	1,000.	
	1976	1,000.	
	1977	1,000.	
	1978	1,000.	
	1979	1,000.	
	1980	1,000.	
	1981	1,000.	
	1982	1,500.	22,000.
New York League for the Hard of Hearing	1937	500.	
	1958	1,000.	
	1959	1,000.	
	1960	1,000.	
	1961	1,000.	
	1962	1,000.	
	1963	1,000.	
	1964	1,000.	7,500.
New York League of Women Voters	1930	100.	
New York Medical College	1982	5,000.	
New York Music Week Association, Inc.	1926	500.	
	1927	55.	
	1928	3,000.	
	1929	2,525.	
	1930	1,000.	
	1931	1,100.	
	1936	350.	8,530.
New York Newspaper Women's Club	1925	100.	
	1927	100.	
	1928	100.	
	1930	100.	
	1931	100.	500.
New York Nursery and Child Hospital	1929	1,000.	
	1930	1,000.	2,000.

	Contribution Period	Total	
New York Philharmonic	1967	2,500.	
	1969	2,500.	
	1970	2,500.	7.500.
New York Plant and Flower Guild	1926-1960	2,175.	
New York Public Library	1929-1982	124,500.	
New York Safety Committee	1928	100.	
New York Section-National Council of Jewish Women	1924	5,000.	
	1925	5,000.	
	1926	5,000.	
	1927	5,000.	
	1928	10,000.	
	1929	10,000.	
	1930	7,000.	
	1931	6.500.	
	1932	2,000.	
	1933	1,000.	
	1934	2,000.	
	1955	2,000.	60,500.
New York Shakespeare Festival	1965	1,000.	
New York Smith College Club	1919	100.	
	1937	100.	
	1938	100.	
	1939	100.	
	1940	100.	500.
New York Society for the Prevention of Cruelty to Children	1923	1,000.	
New York Tuberculosis Association, Inc.	1926-1934	8,217.	
New York University	1924-1982	366,950.	

	Contribution Period	Total	
New York Urban Coalition, Inc.	1968	10,000.	
	1970	12,500.	
	1971	12,500.	
	1972	12,500.	
	1973	12,500.	
	1974	12,500.	
	1975	12,500.	
	1976	12,500.	
	1977	12,500.	
	1978	12,500.	
	1979	12,500	
	1980	12,500.	
	1981	12,500.	
	1982	12,500.	172,500.
New York Urban League	1931	1,500.	
	1933	1,000.	2,500.
Niagara University	1971	25,000.	
Noise Abatement Commission	1930	3,000.	
Northern Westchester Hospital	1962	5,000.	
	1972	5,000.	10,000.
Northwoods Sanatarium	1927	500.	
	1928	2,500.	3,000.
Novitiate of St. Andrew-on-Hudson	1944	1,000.	

	Contribution Period	Total	
Office of the Diocesan Superintendent of Schools	1948	5,000.	
Orphan Home and Kindergarten	1929	100.	
Ossining Children's Center	1959	500.	
	1960	2,500.	3,000.
Our Lady of the Lakes Church			
Carmel, New York	1944	1,058.	
	1946	2,000.	3,058.
Reconstruction Fund of the Church of			
Our Lady of Victory	1968	10,000.	

	Contribution Period	Total	
Pace College	1967	5,000.	
Patrolmen's Benevolent Assn. of the City of New York	1932-1946	110.	
Paulist Choristers	1928	200.	
	1930	100.	
	1931	100.	400.
The Peoples Chorus of New York	1927-1930	150.	
The Philharmonic Symphony Society of New York	1933-1965	77,097.	
Phoenix House Foundation	1969	2,000.	
	1970	2,000.	
	1971	2,000.	
	1972	2,000.	
	1973	2,000.	10,000.
Play Schools Association, Inc.	1945	1,000.	
	1946	1,000.	
	1947	1,000.	
	1948	1,000.	
	1950	1,000.	
	1964	5,000.	10,000.
Playground and Recreation Association of America (New York Section)	1925	2,500.	
	1926	2,000.	
	1927	1,000.	
	1928	5.	
	1929	2,500.	
	1930	2,500.	10,505.

	Contribution Period	Total	
Police Anchor Club Orphans	1942	13.	
	1949	150.	
	1950	100.	263.
Police Athletic League, Inc.	1942-1982	61,600.	
Police Conference New York City	1925	1,000.	
Police Magazine of New York	1925	1,500.	
Police Relief Fund New York City	1925-1947	609.	
Police Uniform Fund	1929	2,500.	
The Presbyterian Hospital	1925	25,000.	
	1928	12,500.	
	1934	50.	
	1936	50.	37,600.
Presbyterian Progress Foundation (Mission for the 70's Fund)	1972	3,000.	
Protestant Council of the City of New York	1944	3,500.	
	1950	6,500.	
	1951	6,500.	
	1952	6,500.	
	1953	6,500.	
	1954	6,500.	
	1955	6,500.	
	1956	6,500.	
	1957	6,500.	
	1958	6,500.	
	1959	6,500.	
	1960	6,500.	
	1961	6,500.	
	1962	1,500.	83,000.

	Contribution Period	Total	
Protestant Fund of Greater New York	1945	15,000.	
	1946	15,000.	
	1947	15,000.	
	1948	15,000.	60,000.
Public Education Association	1930	250.	
	1932	250.	
	1933	250.	
	1934	250.	
	1935	250.	
	1936	250.	
	1938	250.	
	1939	250.	2,000.
Public Schools Athletic League	1919	25.	
	1920	25.	
	1929	5,000.	5,050.
Prospective	1978	5,000.	
	1979	2,000.	7,000.
The Quaker Committee on Social Rehabilitation	1966	2,500.	
	1967	2,500.	
	1968	2,500.	
	1969	2,500.	
	1970	2,500.	
	1971	2,500.	
	1972	2,500.	
	1973	2,500.	
	1974	2,500.	
	1975	2,000.	24,500.

	Contribution Period	Total	
Recording for the Blind, Inc.	1961	2,500.	
	1962	2,500.	
	1963	2,500.	
	1964	5,000.	
	1965	4,000.	
	1966	4,000.	
	1967	4,000.	
	1968	4,000.	
	1969	4,000.	
	1970	4,000.	
	1971	4,000.	
	1972	4,000.	
	1973	4,000.	
	1974	4,000.	
	1975	4,000.	
	1976	4,000.	
	1977	4,000.	
	1978	4,000.	
	1979	4,000.	
	1980	4,000.	
	1981	4,000.	
	1982	4,000.	84,500.
Recreation Rooms and Settlement	1925	2,500.	
	1926	2,500.	
	1927	2,500.	
	1928	2,500.	
	1929	2,500.	
	1930	2,500.	
	1931	2,500.	17,500.
Refugee Children's Non-Sectarian Committee	1939	500.	
Regis High School	1979	5,000.	
	1980	5,000.	10,000.

	Contribution Period	Total	
Religion in American Life, Inc.	1959	1,500.	
	1960	1,500.	
	1961	1,500.	
	1962	1,500.	
	1963	1,500.	
	1964	1,500.	
	1965	1,500.	
	1966	1,500.	
	1967	1,500.	
	1968	1,500.	
	1969	1,500.	
	1970	1,500.	
	1971	1,500.	
	1972	1,500.	
	1973	1,500.	
	1974	1,500.	24,000.
Ridgeview Congregational Church White Plains	1955	2,500.	
The Jacob A. Riis Neighborhood Settlement	1924	1,000.	
Rockaway Beach Hospital	1925	2,000.	
	1926	2,000.	
	1927	2,000.	
	1928	2,000.	
	1929	2,000.	
	1930	1,000.	11,000.
Rogers College (Formerly Maryknoll College)	1957	5,000.	
	1958	5,000.	
	1959	5,000.	
	1960	6,500.	
	1961	6,500.	

	Contribution Period	Total	
Rogers College (cont'd.)	1962	6,500.	
	1963	16,500.	
	1964	6,500.	
	1965	16,500.	
	1966	16,500.	
	1967	16,500.	
	1968	16,500.	
	1969	6,500.	
	1970	6,500.	
	1971	6,500.	
	1972	6,500.	
	1973	6,500.	156,000.
Roosevelt Hospital	1971	10,000	
	1972	20,000.	
	1973	50,000.	
	1974	45,000.	
	1975	20,000.	
	1976	25,000.	
	1977	25,000.	195,000.
Roosevelt House	1942	7,500.	
	1943	3,929.	
	1947	2,000.	13,429.
Roslyn Day Care Center Roslyn, New York	1969	1,500.	

	Contribution Period	Total	
Sacred Heart Alumnae Charities Fund	1951	500.	
	1954	500.	
	1955	500.	1,500.
St. Agnes Hospital White Plains	1931-1982	257,810.	
St. Andrew's Convalescent Hospital	1943	500.	
	1945	500.	1,000.
St. Barnabas Hospital	1963	5,000.	
	1966	10,000.	
	1968	5,000.	
	1970	5,000.	
	1971	5,000.	
	1972	5,000.	
	1973	5,000.	
	1974	5,000.	
	1975	5,000.	
	1976	5,000.	
	1977	5,000.	
	1978	5,000.	
	1979	5,000.	
	1980	5,000.	
	1981	5,000.	
	1982	5,000.	
	1983	5,000.	90,000.
St. Barnabas House	1948-1982	80,000.	
Church of St. Benedict the Moor	1928	1,981.	
	1929	1,750.	
	1931	250.	
	1932	929.	
	1933	100.	
	1934	100.	
	1936	100.	5,210.
St. Bonaventure University Olean, New York	1947	6,000.	
	1962	25,000.	
	1963	10,000.	
	1965	10,000.	51,000.
St. Benedict's Day Nursery	1926	100.	
	1927	100.	
	1928	100.	
	1929	100.	
	1930	100.	
	1931	100.	
	1932	100.	700.

	Contribution Period	Total	
St. Brigid's Church	1929	500.	
	1931	500.	
	1932	500.	
	1933	500.	
	1943	1,000.	3,000.
St. Clare's Hospital	1943-1980	345,000.	
St. Christopher's Inn Building	1925	500.	
Graymoor, New York	1930	500.	
	1932	25.	1,025.
St. David's School	1962-1983	364,000.	
St. Dominic's Guild	1927	100.	
	1928	100.	
	1929	100.	
	1930	100.	
	1931	100.	500.
St. Elizabeth Hospital	1927	1,000.	
	1928	1,000.	
	1929	1,000.	
	1946	50.	3,050.
St. Faith's House	1928	1,000.	
	1929	1,000.	
	1930	1,000.	3,000.
St. Francis of Assisi Church	1944	2,500.	
	1946	1,000.	3,500.
St. Francis College	1962	10,000.	
St. Francis Hospital Roslyn, New York	1976	5,000.	
St. Francis Hospital	1928-1965	126,235.	
Church of St. Gregory Brooklyn, New York	1962	10,000.	
Church of St. Ignatius Loyola	1976	1,000.	

	Contribution Period	Total	
St. Ignatius Loyola Day Nursery	1963	2,500.	
St. James School	1966	6,000.	
Church of St. Jean Baptiste	1947	2,500.	
	1950	350.	
	1954	1,500.	
	1955	10,000.	
	1956	10,000.	24,350.
St. Jean Baptiste School	1958	5,000.	
	1965	5,000.	10,000.
St. Jerome's Day Nursery	1968	3,000.	
St. John the Baptist Church	1960	1,500.	
	1973	5,000.	6,500.
St. John's Guild	1917	1,000.	
	1921	25.	
	1922	1,000.	
	1923	1,000.	
	1925	1,000.	
	1926	25.	
	1927	1,025.	
	1928	1,025.	
	1929	1,025.	
	1930	1,025.	
	1931	1,000.	
	1932	500.	9,650.
St. John's University	1968	7,500.	
	1969	12,500.	
	1971	25,000.	45,000.
St. Joseph's Church Croton Falls, New York	1951	326.	
St. Joseph's Hospital	1922	2,500.	
	1924	2,500.	
	1925	1,000.	
	1926	1,000.	
	1927	2,000.	
	1929	2,000.	
	1931	2,000.	
	1932	1,000.	14,000.

	Contribution Period	Total	
St. Joseph's Day Nursery of New York	1970	5,000.	
	1971	5,000.	
	1972	5,000.	
	1973	5,000.	20,000.
St. Joseph's Seminary Dunwoodie, New York	1946	50,000.	
St. Joseph's Summer Institute, Inc.	1921-1961	13,150.	
St. Luke's-Roosevelt Hospital Center	1917-1982	639,800.	
St. Mary of the Angels Home Syosset, New York	1970	10,000.	
	1971	5,000.	
	1972	5,000.	
	1973	5,000.	
	1974	5,000.	
	1975	3,000.	
	1976	3,000.	
	1977	3,000.	
	1978	2,500.	
	1979	2,500.	
	1980	2,500.	
	1981	2,500.	
	1982	2,500.	51,500.
St. Mary's-in-the-Field	1967	10,000.	
St. Matthews Church	1926-1948	3,815.	
St. Michael's Church	1934	100.	
St. Michael's School	1929	100.	
St. Pascal's Day Nursery	1927-1949	200.	
St. Patrick's Cathedral	1970	3,000.	
St. Patrick's School Bedford Village, New York	1963	2,500.	
	1965	3,000.	
	1971	2,500.	8,000.
Church of St. Paul the Apostle	1947	200.	
	1949	200.	
	1958	1,000.	1,400.

	Contribution Period	Total	
St. Paul's Guild	1943	2,500.	
St. Peter's Church	1944	2,000.	
	1946	2,500.	
	1947	2,500.	
	1948	2,500.	
	1949	2,500.	
	1950	4,000.	
	1951	2,500.	18,500.
St. Peter's School	1957	2,500.	
	1958	5,000.	
	1960	5,000.	
	1962	5,000.	17,500.
St. Peter's Union for Seamen	1919	100.	
	1921	100.	
	1922	100.	
	1929	250.	550.
Church of St. Rose of Lima	1932	20.	
	1946	500.	
	1947	250.	
	1948	250.	
	1949	250.	
	1950	250.	1,520.
St. Stephen's Church	1944	150.	
Church of St. Thomas More	1976	1,500.	
	'77	1,500.	3,000.
St. Vincent de Paul Society	1929	100.	
	1930	100.	
	1931	200.	
	1932	100.	500.
St. Vincent Ferrer Convent	1952	360.	
St. Vincent Ferrer School Building Fund Campaign	1948	10,000.	
St. Vincent's Home for Boys	1964	2,500.	
	1969	2,500.	5,000.
St. Vincent's Hospital and Medical Center	1917-1982	684,200.	

	Contribution Period	Total	
St. Vincent's Hospital of the Borough of Richmond	1967	15,000.	
Salem United Methodist Church	1966	2,500.	
	1982	10,000.	12,500.
Salesian High School	1937	195.	
	1938	300.	495.
The Salvation Army of Greater New York	1918-1982	77,750.	
The Salvation Army - White Plains, New York	1968	3,000.	
Saranac Lake Day Nursery Community	1922	250.	
	1924	250.	500.
The Saranac Lake Study and Craft Guild	1944	2,500.	
Save New York Committee	1926	1,500.	
	1928	1,500.	3,000.
Frances Schervier Home and Hospital	1966	10,000.	
School Art League	1926	100.	
	1927	100.	
	1928	105.	
	1929	100.	
	1930	100.	
	1931	100.	
	1932	100.	
	1944	100.	
	1945	100.	
	1946	100.	
	1947	100.	1,105.
School Children's Welfare League	1926	150.	
School Finance Commission	1925	7,500.	
	1926	526.	
	1927	175.	8,201.
Carl Schurz Memorial Foundation	1930	5,000.	
Scio Methodist Church	1929	250.	

	Contribution Period	Total	
Seaman's Church Institute of New York	1927	2,500.	
	1929	1,000.	3,500.
Elizabeth Seton College	1964	7,500.	
	1966	10,000.	17,500.
Seton Hospital	1928-1935	275.	
Sheltering Arms Children's Service	1954	2,000.	
	1960	2,500.	
	1961	2,500.	
	1963	2,500.	
	1964	2,500.	
	1965	2,500.	
	1966	2,500.	
	1967	3,000.	
	1968	3,000.	
	1969	3,000.	
	1970	3,000.	
	1971	3,000.	
	1972	3,000.	
	1973	3,000.	
	1974	3,000.	
	1975	3,000.	
	1976	3,000.	
	1977	3,000.	
	1979	3,000.	
	1980	3,000.	
	1982	3,000.	59,000.
General Sheridan Memorial Association	1926	250.	
Sisterhood of St. Mary	1921	500.	
Sisters of Charity of St. Vincent dePaul	1967	30,000.	
of New York	1970	3,000.	33,000.
Sisters of the Blessed Sacrament	1967	7,500.	
	1968	5,000.	
Allocated to: All Saints School	1969	5,000.	
St. Charles Borromeo School	1970	5,000.	
	1971	5,000.	
New York City.	1972	5,000.	
	1973	5,000.	
	1974	5,000.	
	1975	5,000.	
	1976	5,000.	
	1977	5,000.	
	1978	5,000.	
	1979	5,000.	
	1980	5,000.	
	1981	5,000.	
	1982	5,000.	82,500.

	Contribution Period	Total	
Sisters of the Good Shepherd	1947	1,000.	
	1949	1,000.	2,000.
The Alfred E. Smith Memorial Foundation	1949-1962	38,200.	
Social Action Department-Diocese of Brooklyn	1951	100.	
Social Work Recruiting Committee of Greater New York, Inc.	1956	2,500.	
	1959	2,500.	
	1961	2,500.	
	1963	2,500.	10,000.
Society of Friends of Music	1926	1,000.	
	1927	1,000.	
	1928	1,000.	
	1929	1,000.	
	1930	1,000.	
	1931	1,000.	6,000.
Soldiers and Sailors Club of New York, Inc.	1927	1,000.	
	1928	1,000.	
	1930	1,000.	3,000.
Southampton Hospital Southampton, New York	1929	100.	
Speech and Hearing Institute	1942	3,500.	
	1945	1,000.	
	1947	1,000.	
	1948	1,000.	
	1949	1,000.	
	1950	1,000.	
	1951	1,000.	
	1953	1,000.	
	1954	1,000.	
	1955	1,000.	
	1956	1,000.	
	1957	1,000.	
	1958	1,000.	
	1961	1,000.	
	1962	1,000.	
	1963	1,000.	
	1964	1,000.	
	1965	1,000.	
	1967	1,000.	
	1968	1,000.	
	1970	1,000.	
	1972	1,000.	
	1974	1,000.	25,500.

	Contribution Period	Total	
Stadium Concerts, Inc.	1923-1964	27,250.	
Stadium University Fund	1919	100.	
Stevenson's Society Saranac Lake, New York	1927	100.	
Stony Wold Sanatorium	1928	1,000.	
Strykers Lane Community Center	1930	2,000.	
	1931	2,000.	
	1934	500.	
	1935	500.	
	1936	500.	
	1937	500.	
	1938	1,000.	
	1939	1,000.	
	1940	1,000.	9,000.
State Education Committee	1926	595.	
Summer Camp for New York City Children	1927	150.	
Summer Vacations for Boys and Girls	1926	150.	
Sydenham Hospital	1927	750.	
Symphony of the Air, Inc.	1957	500.	

	Contribution Period	Total	
Teachers Club of New York, Inc.	1926	1,000.	
	1928	1,000.	2,000.
Temple Emanu-El	1926	150.	
	1928	15.	
	1944	10,000.	10,165.
Temple of Religion	1939	2,500.	
Third Order Villa, Garrison, New York	1926	100.	
Town Hall	1922	10,000.	
	1924	10,000.	
	1932	50.	20,050.
Trail Blazer Camps, Inc.	1958-1982	36,000.	
Travelers Aid Society of New York	1925-1977	46,520.	
Tri-Faith Chapels Building Fund	1966	15,000.	
Trudeau Sanatorium Saranac Lake, New York	1945	5,000.	
	1946	5,000.	
	1947	5,000.	
	1948	5,000.	
	1949	5,000.	25,000.
Tuberculosis Preventorium	1926	500.	
Two Hundred and Twelfth Regiment Athletic Association	1930	250.	

	Contribution Period	Total	
Union of American Hebrew Congregations	1921	250.	
	1923	5,000.	
	1928	150.	5,400.
Union Settlement Association	1922	25.	
	1924	25.	
	1926	525.	
	1927	812.	
	1928	525.	
	1929	1,000.	
	1931	500.	
	1968	2,500.	5,912.
Union Theological Seminary	1965	5,000.	
United Cerebral Palsy of New York City	1950	5,000.	
	1951	5,000.	
	1952	5,000.	
	1965	5,000.	
	1969	10,000.	
	1970	10,000.	
	1971	10,000.	
	1972	15,000.	
	1973	15,000	
	1974	15,000.	
	1975	10,500.	
	1976	15,000.	
	1977	15,000.	
	1978	15,000.	
	1979	15,000.	
	1980	15,000.	
	1981	20,000.	
	1982	20,000.	220,500.
United Hospital Fund of New York	1923-1982	565,250.	
United Jewish Appeal	1950-1975	260,000.	
United Parents Association	1928	2,100.	
	1929	2,500.	4,600.
United Service Organization	1942	10,000.	

	Contritution Period	Total	
Vacation Association	1918	25.	
	1921	124.	149.
Vacation Camp & Dormitory for the Blind	1938	100.	
	1941	100.	
	1944	500.	
	1945	500.	
	1946	500.	
	1947	500.	
	1948	500.	
	1949	500.	
	1950	500.	
	1951	500.	
	1952	500.	4,700.
Vacation Fund for Poor Children	1929	500.	
	1930	500.	1,000.
Vassar College	1922	2,000.	
	1923	100.	
	1924	100.	
	1926	2,600.	
	1927	2,500.	
	1928	2,500.	
	1929	2,600.	
	1930	2,500.	14,900.
Vassar Club	1927	200.	
	1930	100.	
	1931	100.	400.
New York County Council Veterans of Foreign Wars	1931	250.	
Victoria Home	1923	1,000.	
Victory Hall Association	1922	250.	

	Contribution Period	Total	
Visiting Nurse Service of New York	1920-1982	245,445.	
Vocational Adjustment Bureau for Girls	1925	1,000.	
	1927	1,000.	2,000.
Vocational Advisory Service	1921-1965	35,200.	
Mrs. Bidwell Brown's Vocational & Placement Centre	1928	500.	
	1929	500.	
	1930	1,500.	
	1931	1,500.	
	1932	500.	
	1933	750.	5,250.

	Contribution Period	Total	
Wading River Congregational Church Wading River, New York	1959	1,000.	
	1965	5,000.	
	1967	5,000.	
	1971	5,000.	16,000.
Mary Manning Walsh Home	1958	2,500.	
	1966	50,000.	
	1967	25,000.	
	1968	15,000.	
	1972	10,000.	
	1973	10,000.	
	1974	6,000.	118,500.
War Work Commission	1918	100.	
Washington School of New York	1922	5,000.	
	1923	5,000.	
	1924	5,000.	
	1926	5,000.	
	1927	3,500.	
	1928	50.	23,550.
Welfare Council of New York City	1926	2,500.	
	1928	1,000.	
	1929	1,000.	
	1930	1,000.	
	1933	1,000.	
	1934	1,000.	
	1943	2,500.	
	1944	2,500.	12,500.
Welfare Island Synagogue Committee	1925	1,000.	
Wells College	1922	2,000.	

	Contribution Period	Total	
Westchester County Children's Association	1930	1,000.	
	1931	250.	
	1932	100.	
	1933	100.	
	1934	100.	
	1935	100.	
	1936	100.	1,750.
Westchester County Society for the Prevention of Cruelty to Children	1930	100.	
Westside Center for Family Services	1943-1981	35,100.	
West Side Jewish Centre	1929	100.	
	1932	50.	150.
West Side Neighborhood Inc.	1928	100.	
West Side Nursery	1927	100.	
Whistler Memorial Fund at N.Y. U.	1928	100.	
White Plains Community Chest Inc.	1931	250.	
	1932	250.	
	1933	250.	
	1952	1,000.	
	1953	1,000.	
	1954	1,000.	3,750.
White Plains Hospital White Plains, New York	1944	500.	
	1945	500.	
	1947	500.	
	1948	500.	
	1949	500.	
	1950	500.	

	Contribution Period	Total	
White Plains Hospital (cont'd.)	1951	5,000.	
	1952	500.	
	1953	500.	
	1954	500.	
	1961	10,000.	
	1973	5,000.	
	1978	5,000.	29,500.
White Plains Police and Firemen	1923-1948	375.	
White Plains Y.M.C.A.	1944	500.	
	1945	500.	
	1947	500.	
	1948	500.	
	1949	500.	
	1950	500.	
	1951	500.	
	1967	5,000.	8,500.
White Plains Y.W.C.A.	1963	5,000.	
Wiltwyck School for Boys	1964	10,000.	
	1967	5,000.	15,000.
Winfield Day Nursery, Inc.	1952	1,000.	
	1953	1,000.	
	1955	1,000.	3,000.
Woman's Hospital	1944	1,000.	
	1958	5,000.	
	1962	20,000.	
	1963	5,000.	31,000.

	Contribution Period	Total	
Xavier High School	1947	500.	
	1948	100.	
	1949	100.	
	1956	100.	
	1967	5,000.	
	1969	10,000.	
	1970	10,000.	
	1971	10,000.	
	1972	10,000.	
	1973	15,000.	
	1974	10,000.	
	1975	7,500.	
	1976	10,000.	
	1977	7,500.	
	1978	2,500.	98,300.

	Contribution Period	Total	
Yeshiva College	1932	50.	
	1936	50.	100.
Yeshiva University	1954	25,000.	
Young Folks League for Aid to Hebrew Infants	1930	500.	
	1933	150.	
	1938	250.	
	1939	250.	
	1940	250.	
	1941	250.	
	1942	250.	
	1943	250.	
	1944	250.	2,400.
Young Men's Christian Association of Greater New York	1926-1982	77,500.	
Young Men's Hebrew Association	1927	12,500.	
	1928	12,500.	25,000.
92nd Street Y.M.-Y.W.H.A.	1970	1,000.	
Young Women's Christian Association of Brooklyn	1953	100.	
	1955	100.	200.
Young Women's Christian Association of the City of New York	1921-1982	112,000.	
New York Board of Y.W.C.A.	1919	150.	
Yonkers Young Women's Christian Association	1929	1,000.	
	1930	5,000.	
	1934	71.	6,071.
Youth Council Bureau, Inc.	1943	1,500.	

ATTACHMENT III

Altman Foundation Income And Charitable Distributions in Excess of Net Investment Income

	Gross Investment Income (Not Including Gains/Losses on Sales of Securities)	Charitable Distributions in Excess of Net Investment Income
1982	$ 877,268	— —
1981	$ 861,253	— —
1980	$ 801,132	17,502
1979	$ 792,652	— —
1978	$ 752,238	— —
1977	$ 721,214	24,500
1976	$ 712,962	37,593
1975	$ 698,614	107,507
1974	$ 818,821	9,298
1973	$ 722,750	— —
1972	$ 679,978	407,092

ATTACHMENT IV

Altman Foundation
Operating Expenses

	Operating Expenses	Federal Excise Tax on Investment Income	Total Expenses
1982	$ 54,086	$ 19,500	$ 73,586
1981	$ 42,387	$ 17,000	$ 59,387
1980	$ 43,034	$ 16,000	$ 59,034
1979	$ 50,675	$ 15,000	$ 65,675
1978	$ 36,619	$ 15,000	$ 51,619
1977	$ 37,314	$ 29,000	$ 66,314
1976	$ 35,655	$ 28,000	$ 63,655
1975	$ 35,021	$ 26,500	$ 61,521
1974	$ 42,714	$ 31,705	$ 74,419
1973	$ 46,014	$ 28,000	$ 74,014
1972	$ 29,870	$ 27,000	$ 56,870

ATTACHMENT V

JOHN S. BURKE

Born: New York City, 1923

Address: 361 Fifth Avenue
New York, NY 10016

Education: Loyola School, New York City
Canterbury School, New Milford, CT
Yale University, New Haven, CT

Service: U.S. Marine Corps. Discharged as Sergeant
U.S. Marine Corps Reserve 1945.

Joined B. Altman & Co., 1946

Elected President, 1954

Elected Chairman of the Board, 1969

Married Stan O'Connell, 1947 (deceased 1982)

Five Children

Five Grandchildren

President and Trustee of Altman Foundation. Trustee since 1948.

Co-Chairman: Cardinal's Committee of the Laity, Archdiocese of New York

Trustee: Canterbury School
Catholic Charities of the Archdiocese of New York
Alfred E. Smith Foundation

Board of Managers: Roman Catholic Fund for Children and Other Purposes

Director: American Retail Federation
Frederick Atkins, Inc.
Better Business Bureau of Metropolitan New York, Inc. - also Vice Chairman
The Fifth Avenue Association, Inc. - also Vice President
Interfaith Committee on Released Time Religious Education, Inc.
Ireland-United States Council for Commerce and Industry, Inc.
Metropolitan New York Retail Merchants Association - also member of the Executive Committee
New York Convention and Visitors Bureau, Inc.
National Retail Merchants Association - also a member of the Executive Committee

Advisory Board: Thirty-Fourth Street Midtown Association, Inc.

Member: Knights of Malta
Past President of the Society of the Friendly Sons of St. Patrick in the City of New York
Merchants Council New York University School of Retailing
The Union League Club
The Misquamicut Club

MARTIN F. SHEA

Business: Morgan Guaranty Trust Company of New York

Title: Vice President (in charge of Legal Matters - Trust and Investment Division)

Address: 9 West 57th St., New York, NY 10019

Education:
Loyola School, New York, NY
Dartmouth College, A.B.
Columbia University School of Law, LL.B.
New York University School of Law, LL.M.

Professional:
Member of the U.S. Secretary of State's Advisory Committee on Private International Law
Member of the Executive Committee, Trust Division, American Bankers Association
Chairman of the Trust Counsel Committee, Trust Division, American Bankers Association
Member of the Government Relations Committee, New York State Bankers Association
Chairman (1977-1978), Trust Division, New York State Bankers Association
Vice Chairman (1976-1977), Trust Division, New York State Bankers Association
Member of the Executive Committee (1974-1979), Trust Division, New York State Bankers Association
Member of the Bar of the State of New York
Member of the Bar of the Supreme Court of the United States
Member of the New York State Bar Association

Other Activities:
Member of the Board of Directors of B. Altman & Co., New York, NY
Member of the Board of Trustees of the Altman Foundation, New York, NY
Member of the Board of Trustees of St. Vincent's Hospital and Medical Center, New York, NY
Member of the Board of Directors and Secretary, Catholic Youth Organization of the Archdiocese Of New York
Member of the Board of Trustees, New York Foundling Hospital, New York, NY
Member of the Cardinal's Committee of the Laity For Charity, Archdiocese of New York
Former Member of the Board of Trustees (1968-1981 and Chairman of the Board 1968-1979) of the College of Mount Saint Vincent, Riverdale, New York
Secretary-Treasurer and Member of the Board of Councilors of the Association of Knights of Ladies of the Equestrian Order of the Holy Sepulchre of Jerusalem (Eastern Lieutenance of the United States)

Secretary and Member of the Board of the American Association of Master Knights of the Roman Catholic Sovereign Military Order of Malta in the U.S.A.

THOMAS C. BURKE

Born: New York City, May 2, 1924

Address: 14 Wall Street
New York, NY 10005

School: Canterbury School, New Milford, CT
Graduated 1941

Universities and Degrees: Yale University, B.A., 1945
Columbia University Law School, LL.B, 1948

Naval Service: Lt. (j.g.), USNR in South Pacific area, 1944-1946

Occupation: Lawyer; partner in the law firm of White & Case.

Associate, White & Case, 1948-1953; 1955-1959; Assistant U.S. Attorney, Southern District of New York, 1953-1955; Partner, White & Case, 1960-Present.

Married to former Janet McKay (7/13/57)

		Born
Children:	Janet Marie Burke	9/17/58
	Thomas Churchill Burke, Jr.	10/29/59
	Michael Francis Burke	9/11/60
	James McKay Burke	8/22/62
	Peter Christopher Burke	12/6/63
	Anne Marion Burke	9/20/66
	Susan Helen Burke	6/18/69

Current Activities:

Trustee and Treasurer of Altman Foundation, New York, NY

Director of B. Altman & Co., New York, NY

President of the Board of Directors of The Catholic Home Bureau, New York, NY (Child care agency)

Director of The Greater New York Fund, New York, NY

Trustee of The New York Medical College

Member of the Board of Trustees of St. David's School, New York, NY (President of the Board, 1975-1982)

Former Activities:

Member of the Board of Education of The City of New York, (1964-1968)

Trustee of the College of Mount St. Vincent, Bronx, NY, (1968-1981)

Trustee of Canterbury School, New Milford, CT 06776, (1975-1978)

M.A. SELINGER, JR.

Address: American Express Plaza
New York, NY 10004

Education: Haverford College, Haverford, PA
October, 1945 - June, 1949

Landon Preparatory School, Washington, D.C.
Graduating in February, 1944.

Military Service: U.S. Navy. Served aboard USS Louisville in Pacific Theater July, 1944 to May, 1945.

Employment: American Express Company
1977 - Present

Vice President, FSI Sales
Responsible for:

Development and maintenance of senior level banking contacts throughout eastern quarter of the country.

Supervision and management of sales force for sales and distribution of company's payment products.

Formerly: Vice President, Corporate Public Affairs
1971-1977

Vice President, Government Affairs, Washington, D.C.
1967-1971

Vice President, Airline Sales, Card Division
1964-1967

Eastern Airlines
1949-1964

Division Vice President, Passenger Sales; Deputy Vice President, Sales and Advertising and General Sales Manager; Assistant to President, (Malcolm A. MacIntyre); and various sales and public relations assignments in Washington, D.C. From 1958 until moving to New York in 1962, District Sales Manager in Washington for the company.

Other Activities: Trustee, Altman Foundation, 1977 - Present
President and Director of The American Express Foundation, 1971-1977
Trustee, Landon School for Boys, 1968-1971.

JANE B. O'CONNELL

Born: New York City, August 14, 1941

Address:
1 East 91st Street
New York, NY 10028

Education:
Manhattanville College, B.A., 1963
New York University School of Education, M.A. 1968

Professional Experience:

Director of Development, Convent of the Sacred Heart, (Independent Girls' School), New York, NY 1976 - Present

Teacher, retarded children, Goldville School, U.S. Army Schools, Fort Knox, KY 1964-1965.

Teacher, High School English, Washington Irving School (N.Y. Public School Systems) 1963-1964

Professional Associations:

Co-chairman, Metropolitan Area Independent School Development Association. 1980 - Present

Member, Network Commission on Goals Evaluation Committee of Sacred Heart Schools in the U.S. 1983 -

Panelist, Council on Advancement and Support of Education (CASE). 1983.

Member of Evaluation Team, Newton Country Day School, Boston, MA. 1982.

Married Ralph A. O'Connell, M.D. (1963)

Children:		Born
	Ralph E. III	1964
	Ellen C.	1965
	John B.	1970

Community Activities:
Trustee, Altman Foundation, 1979 - Present
Benefit Committee, Inner City Scholarship Fund. 1976 - Present
Founder and President, Parents' Association, Member Advisory Board, Convent of the Sacred Heart, 1974 - 1976.
Chairman of Volunteers, New York Zoological Society - Friends of the Zoo, 1972 - 1976.
Member of Parish Council, Church of St. Thomas More, 1970 - 1974. (Vice President 1972-1974).
Religion Teacher, Confraternity of Christian Doctrine Program, 1970-1974.
Den Mother, Cub Scouts, Brick Presbyterian Church, New York, NY 1970-1971.
Board of Directors, Watch Hill Yacht Club, RI 1980 - Present.

THOMAS F. MOORE

DATE OF BIRTH:	November 26, 1924
MARRIED:	Marguerite B. Reckus 1951 - 8 children
EDUCATION:	Yale University B.A. 1949
MILITARY:	World War II Rifleman 2nd Ranger Infantry Battalion
BUSINESS:	President, The Moore Company - Manufacturers of woven and knit elastic fabrics and of rubber and synthetic tapes and threads. Board of Directors - The Washington Trust Company
CIVIC ACTIVITIES:	Altman Foundation - Trustee, 1978 - Present St. Michael's Church - Parish Council 3 years. St. Michael's Church - Fund Drive Co-chairman, Special Gifts The Westerly Hospital - Trustee 1956 - Present The Westerly Hospital - President of Hospital for two years and member of Executive Committee for about 20 years. Director Westerly-Pawcatuck Community Fund 3 years

Chairman RANGEL. Mr. Zivley.

STATEMENT OF WALTER P. ZIVLEY, COUNSEL, ON BEHALF OF HOUSTON ENDOWMENT, INC.

Mr. ZIVLEY. Thank you, Mr. Chairman, for the opportunity to testify.

I am Walter Zivley. I am a partner in the Houston law firm of Liddell, Sapp, Zivley, Brown & LaBoon. I am testifying on behalf of Houston Endowment of Houston, Tex. We previously submitted 100 copies of our written statement which also includes answers to the questions posed by the subcommittee in its release of May 3, 1983.

While I would like my statement written in the record, I would like to summarize the highlights for the benefit of the subcommittee.

We strongly believe we have a compelling case for enactment of H.R. 2589 sponsored by Representatives Archer, Pickle, Campbell, Flippo, and Hance, along with 30 other Members of Congress. That legislation preserves constitutionally free, independent local newspapers at no revenue loss to the Government.

The Houston Endowment was organized in 1937 by Jesse H. Jones and his wife. As of December 31, 1982, the endowment's grants throughout the United States for educational, cultural, charitable, medical and civic purposes have aggregated over $214 million.

Since 1958, almost 3,400 students, many of whom are either disadvantaged or minority groups, from the Houston area alone have received college scholarships from the endowment.

A complete compilation of recent charitable endeavors is referenced in the written statement.

Clearly the endowment has kept its charitable function tantamount at all times and has made a substantial contribution to the betterment of life in the United States.

The specific problem we have with the foundation rules that is addressed by H.R. 2589 is the divestiture requirement of present law that requires the endowment to divest of the Houston Chronicle Publishing Co. H.R. 2589 would allow continuation of that ownership.

As more fully enunciated in our written statement, there are several compelling reasons for enactment.

First, 4943 violates first amendment freedoms guaranteed by the Constitution. As the Supreme Court recently stated in the *Minneapolis Star & Tribune* case, a tax that targets individual publications within the press places a heavy burden on the Government to justify its action and such statute is presumptively unconstitutional.

Section 4943 imposes a direct restraint upon first amendment freedom by forcing the endowment to relinquish ownership and operation of the Houston Chronicle.

I would like a copy of our legal brief on the constitutional issues included in the record today.

Chairman RANGEL. Without objection.

Mr. ZIVLEY. An independent local press is in the national interest. In congressional hearings on the concentration of newspaper ownership, it became clear that newspapers are now controlled by fewer and fewer persons, generally large international chains. This concentration of ownership severely restricts an independent, broad-based, free press.

As H.R. 2589 does, it should be the policy of Congress to encourage, not discourage, the ownership of independent local newspapers.

There is no revenue loss to the Government under H.R. 2589. A private foundation would continue to be subject to all excise taxes on investment income, the taxes on self-dealing, the tax on failure to distribute income, the tax on jeopardy investments, and the tax on unrelated business income, the combination of which insures the newspaper would not be operated for any personal gain or improper purpose.

Of course, the income of the newspaper itself is subject to the same income taxes as any other newspaper.

One aspect of foundations that was given attention in the late sixties was the possibility of competitive unfairness.

Exhaustive statistics included in our written statement, including total advertising lineage and total paid circulation, confirm that the endowment's ownership of the Houston Chronicle has not adversely affected its local rival, the Houston Post.

Further, H.R. 2589 includes a provision to the effect that any newspaper covered by the bill could benefit from the bill only if the newspaper is operated in accordance with standards of efficiency and profitability prevailing in the newspaper industry.

There simply has not been any evidence of competitive unfairness in our situation.

In summary, the Houston Endowment has established a longstanding, economically significant tradition of charity. With enactment of H.R. 2589, this tradition would be strengthened at a time when the Federal Government has reduced its role and it has become clear other enterprises must do more to make the advantages of American society available to all.

H.R. 2589 preserves and encourages a constitutionally free, independent local press at no revenue loss to the Government and should be adopted.

Thank you, Mr. Chairman. I would be happy to answer any questions that may have arisen today or from the written statement previously filed.

[The prepared statement and miscellaneous material follow:]

STATEMENT OF HOUSTON ENDOWMENT INC., HOUSTON, TEX.

This statement is submitted on behalf of Houston Endowment Inc. of Houston, Texas, in response to House Ways and Means Subcommittee on Oversight announcement of hearings to examine rules governing private foundations and indicating a desire for information concerning needed changes in existing law.

HOUSTON ENDOWMENT INC. - GENERAL INFORMATION

Houston Endowment Inc. ("Endowment") was organized in 1937 by Jesse H. Jones and his wife, Mary Gibbs Jones. Mr. Jones is best remembered for his services during the Franklin D. Roosevelt administration as Secretary of Commerce and as head of the Reconstruction Finance Corporation.

Prior to his death in 1956, Mr. Jones pursued a policy of making substantial annual gifts to Endowment, and Endowment was named as principal beneficiary in his will.

A large portion of Endowment's activity has been in the field of education, and major emphasis has been placed on the establishment of scholarships in colleges and universities throughout the

United States. This has been done in two ways. First, Endowment has established scholarship programs with a number of colleges and universities. These institutions assume responsibility for administering the scholarships, including determining the amount of each scholarship and the recipient of the scholarship. Second, Endowment inaugurated a program in 1958 which has continued to this date involving an arrangement with the Houston Independent School and contiguous school districts and private parochial schools whereby such school districts and schools make nominations from their graduating high school students, and an impartial group of substantial citizens, not connected with Endowment, choose the scholarship winners on the basis of achievement, economic need and leadership potential. Scholarship winners are not restricted as to the subject in which they may major, and they may attend any accredited college or university of their choice in the United States. Since the inception of this one program, 3,382 students have received scholarships and have attended over 241 colleges and universities. 597 college students are attending college on such Jones scholarships on this date. The scholarships granted under this program since its inception aggregate $9,725,500.00 as of December 31, 1982.

Endowment has made many educational, charitable, cultural, medical and civic grants. The following is a short, partial listing to illustrate the scope and nature of them:

The Museum of Fine Arts, Houston	
Contribution, Exhibition Endowment Fund	$3,101,000
The Museum of Natural Science, Houston	
Building Addition	1,500,000
Rice University, Houston	
Scholarships and Gift of Real Property	6,981,915
Establishment of Graduate School of Administration	6,500,000
Endowed Scholarship Program (since 1978) for 25 Private Texas Colleges	4,650,000
The University of Texas at Austin	
To Endow College of Communication	5,000,000
University of Notre Dame	
Professorship in Management, Annual Contribution	100,000
Faculty Research Fund	1,000,000
Texas Christian University, Fort Worth	
Library Building	500,000

Moody House, Inc., Galveston, Texas Home for Aged, Gifts of Real Property	5,720,000
Jewish Community Center, Houston Purchase of Campsite in Fort Bend County	325,000
Union y Progresso Barrio Development Inc., Houston Neighborhood Medical Clinic and Senior Citizens Center	1,103,608
Eliza Johnson Home for Aged, Houston Capital Funds and Support of Program	445,000
The Arthritis Institute of The National Orthopedic and Rehabilitation Hospital, Arlington, Virginia Fellowship Endowment	200,000
Hermann Hospital, Houston Completion of 8th and 9th Floors and Establishment of Texas Kidney Institute	6,300,000
Texas Tech University, Health Science Center, Amarillo, Texas Scientific Research Library in Amarillo Medical Center	250,000
Texas Heart Institute, Houston Expansion of facilities	2,000,000
Southwestern University, Georgetown, Texas Construction and Rehabilitation of Educational Properties	5,000,000

As of December 31, 1982, Endowment's grants for educational, charitable, cultural, medical and civic purposes aggregated $214,315,674.30.

Attached is a tabulation covering the past six years, showing for each year the fair market value of Endowment's assets, the Distributable Amount and Qualifying Distributions, all as reported by Endowment to the Internal Revenue Service, except amounts for 1982 are estimated.

RECOMMENDED CHANGES IN EXISTING LAW

Endowment is the owner of all of the capital stock of Houston Chronicle Publishing Company, a Texas corporation, which publishes the Houston Chronicle, a daily newspaper of general circulation in Houston and surrounding areas.

In 1969, Section 4943 was added to the Internal Revenue Code. The general effect of this Section is to require a private foundation (as defined in Section 509 of the Code) to dispose of its ownership in the assets or stock of any "business enterprise" (as defined in Section 4943) within a specified period of time. Exceptions contained in Section 4943 permit a private foundation and its "disqualified persons" (as defined in Section 4946) to continue to own up to 20 percent of the assets or stock of a business enterprise in the aggregate (or, in the case of a business enterprise owned by the foundation prior to May 26, 1969, up to 50 percent in the aggregate).

As a result of Section 4943, all private foundations will be prohibited after May 26, 1989, from owning more than 50 percent of the assets or stock of any business enterprise owned by them on May 26, 1969. In addition, Section 4943 will prohibit private foundations from owning over 20 percent of the assets or stock of any business enterprise acquired since May 26, 1969.

Endowment recommends to the Subcommittee that Section 4943 be amended to permit the private foundations which presently own interests in certain daily newspapers to continue that ownership. There are several compelling reasons why this should be done:

First, the divestiture requirements and penalty tax provisions of Section 4943 violate the provisions of the First and Fifth Amendments to the Constitution of the United States.

The operation and publication of a newspaper represent the quintessential exercise of the First Amendment freedoms of speech and press. Section 4943 imposes a direct restraint upon these First Amendment freedoms of Endowment by forcing it to relinquish its First Amendment right to own and operate the Houston Chronicle Publishing Company. The Constitution of the United States requires that all persons or groups be treated equally in their exercise of these First Amendment freedoms, unless some compelling governmental interest which cannot be achieved by any other means necessitates that they be treated differently. The United States Supreme Court has on many occasions, and most recently in Minneapolis Star & Tribune Co. vs. Minnesota Commissioner of Revenue, _____ U.S. _____, 51 U.S.L.W. 4317 (March 29, 1983), ruled that the government may not "tailor a tax so that it singles out a few members of the press . . ." for disfavored treatment. A tax that "targets individual publications within the press places a heavy burden on [the government] to justify its action." Such a statute, in the Court's words, is "presumptively unconstitutional." A governmental action which restricts the activities of a certain group of newspapers in order to protect other newspapers from competition runs afoul of these First Amendment principles. Section 4943 and other provisions of the Internal Revenue Code, by denying Endowment either direct or indirect access to the public, leaves it without any means to exercise its freedoms of speech and press. This deprives the public of a source of information and ideas. The policies of the First Amendment, which favor the free flow of ideas and the widest possible dissemination of information from diverse and antagonistic sources, require that alternatives be adopted to achieve the taxing goals of Section 4943 which would impose a lesser restriction on the rights to free speech and press of Endowment and other private foundations.

Additionally, the equal protection component of the due process clause of the Fifth Amendment to the Constitution demands that classifications which restrict the exercise of fundamental First Amendment freedoms must be necessary to promote a compelling governmental interest. Section 4943 applies to private foundations operating a functionally unrelated business enterprise, but not to any other organization. For example, the statute does not affect those newspapers or businesses owned by other tax-exempt entities. The different treatment given these groups in many respects goes beyond that necessary to achieve the congressional objectives of the statute. Also, the statute fails to apply to all the businesses which present the problems Congress sought to control. The Constitution's guarantee of the equal protection of the laws would be better served if alternative means were adopted to pursue the taxing goals of Section 4943 which would impose a lesser restraint upon the rights of freedom of speech and press.

Second, divestiture of the Houston Chronicle will most likely cause the newspaper no longer to be a locally owned independent newspaper, which is not in the national interest. Federal and state laws generally require managers of private foundations and executors of estates to obtain the highest available price for assets sold. Recent history has repeatedly demonstrated that the highest bidders for independent newspapers are the national and international newspaper chains, thereby vesting in the hands of fewer and fewer persons the power to control the reporting and editorial policies of more and more newspapers. This concentration of power is a matter of concern to Congress and the Federal Trade Commission and has been the subject of Congressional hearings, particularly hearings held during May, 1979, by the Committee on Small Business, U. S. Senate, which inquired into "Economic Concentration In The Media -- Newspaper." During such hearings Mr. Alfred E. Dougherty, Jr., Director, Bureau of Competition, Federal Trade Commission, made the following statements:

> Between 1910 and 1976, the number of newspaper chains rose from 13 to 167, and the number of chain-owned dailies rose from 62 to more than 1000. The percentage of circulation held by those chain-owned papers rose from 43.4 percent in 1930 to 71 percent in 1976.

Conversely, in that same period, the number of independently-owned newspapers dropped from over 97 percent of the total number of dailies to less than 41 percent. This means that there are now fewer than 900 remaining independent daily newspapers in this country.

These changes have been accompanied by a marked decrease in the number of newspapers which face direct competition from other daily metropolitan newspapers. In 1923, nearly 39 percent of the U. S. cities had more than one independently-owned daily newspaper. By 1973, this figure had dropped to less than 3 percent. In absolute numbers, there were 502 cities with two or more daily newspapers in 1923; by 1973, this number had dropped to 37.

Although the number of chain-owned dailies has increased dramatically, so has the number of newspaper chains. As noted, in 1919 there were 13 newspaper chains; by 1976, there were 167."

Attached is a copy of an article appearing in the September, 1979, issue of Editor and Publisher giving further information with regard to the growth of the newspaper chains. Based upon information compiled by the American Newspaper Publishers Association showing all newspaper sales and acquisitions in the United States for the period 1975-1981, it appears that over 92 percent of the sales and acquisitions occurring during such period were to or by newspaper chains or foreign buyers.

To insure the continuation of a broad-based, independent, free press in the United States, the policy of Congress should be to encourage (rather than discourage) the ownership of independent local newspapers throughout the country.

Under current law, continued ownership of independent newspapers is made virtually impossible. If the newspaper is owned by a private foundation, Section 4943 mandates its sale. If the newspaper is owned by an individual, payment of the Federal estate tax obligations incurred upon the death of the principal owner or his or her spouse necessitates sale.

Concern about concentration with respect to the newspaper industry exists throughout the world. The Canadian government has expressed concern about this and has announced that it plans legislation to limit holdings of newspaper chains. Such concentration is aggravated by the number of newspaper failures, notably in Washington, Philadelphia, New York, Denver and elsewhere in this country, as well as highly publicized failures in London and other parts of the world. The fact of the matter is that independent daily newspapers are fast diminishing. Only 538, or 31 percent of the 1973 U. S. dailies are independent, according to information compiled by the American Newspaper Association Membership Department. The rest are members of groups in which two or more newspapers in different communities are under common ownership.

H. R. 2589, sponsored by 33 members of Congress, including Congressman J. J. Pickle, Kent Hance, Bill Archer, Ronnie Flippo and Carroll Campbell of the House Ways and Means Committee, provides that a private foundation may continue to own a local, independent newspaper.

H. R. 2589 offers an additional advantage in that it would encourage an individual who owns controlled interest in a newspaper to bequeath his interest in such newspaper to a private foundation since ownership by the private foundation would continue local ownership and control and would permit the donor, by devoting the newspaper to charity, to place it in the hands of the managers of the Foundation for future management. Accordingly, the bill offers an attractive alternative to some who would otherwise be required to sell in order to pay federal estate taxes.

A third compelling reason for continuation of ownership of this newspaper by Endowment is the total absence of revenue lost to U. S. govvernment.

It should be noted that if H. R. 2589 becomes law, a private foundation owning a newspaper would continue to be subject to the requirements of Section 4940 (excise tax on investment income), Section 4941 (tax on self-dealing), Section 4942 (tax on failure to distribute income), Section 4944 (tax on jeopardy investments), and Section 512 (tax on unrelated business income), the combination of which would effectively insure against the newspaper being operated for any personal gain or other improper purpose. Further, under existing law such newspaper is subject to the same income taxes as a newspaper which is owned by an individual or a corporation.

Finally, there would be no competitive unfairness if H. R. 2589 were enacted.

The legislative history of the stock ownership limitation with respect to private foundations adopted by Congress in 1969 reflects that one of the paramount considerations for the legislation was a desire to prevent a competetive disadvantage between businesses operated by foundations and those operated by private individuals, the thought being that individuals managing businesses operated by foundations tend to devote an unreasonable amount of earnings to the enhancement of plant, equipment and personnel and do not give the same attention to realization of profit as a privately owned competitor.

The Houston Chronicle has as its principal competitor in the City of Houston the Houston Post, a morning daily newspaper. The ownership of the Houston Chronicle by a private foundation has not adversely affected the Houston Post, as is reflected from a comparison of the following figures:

I. Total Advertising Linage (Source: Media Records, an independent advertising measurement firm):

	Total Advertising Linage	Market Share	National Ranking
1965			
Chronicle	53,489,842	56%	8
Post	41,219,214	44%	Not in top 10
1982			
Chronicle	114,275,040	58%	2
Post	81,680,199	42%	9

II. Total Paid Circulation (Source: Publisher's Statement to the Audit Bureau of Circulation, an independent circulation auditing firm):

	Daily	Saturday	Sunday
1965			
Chronicle	277,488(51.9%)	256,121(49.1%)	317,597(53.2%)
Post	257,277(48.1%)	265,018(50.9%)	297,104(46.8%)
Sept. 30, 1982			
Chronicle	419,869(52.7%)	410,155(50.5%)	502,654(53.5%)
Post	376,455(47.3%)	401,185(49.5%)	436,659(46.5%)

Although, as the foregoing figures clearly reflect, there has been no significant deterioration in the competitive position of the Post as against the Chronicle, there is included in H. R. 2589 a provision to the effect that any private foundation owning an independent local newspaper covered by the bill would benefit from the provisions of the bill only as long as such newspaper is operated in accordance with standards of efficiency and profitability prevailing in the newspaper industry in the United States from time to time. Surely such a provision will provide adequate assurance to Congress and protection to the Houston Post.

In Press Release #5 dated May 3, 1983, the Subcommittee presented an extensive list of questions concerning foundations. The Houston Endowment Inc.'s responses to those questions is attached.

Houston Endowment has established a long, proud and economically significant tradition of charitable endeavors. With retention of the Houston Chronicle (as permitted in H. R. 2589), this tradition would be strengthened at a time when the federal government has reduced its role, compelling all other enterprises to do more to make the advantages of America available to all. H. R. 2589 preserves and encourages a constitutionally free, independent local newspaper at no revenue lost to the Government and should be adopted.

ATTACHMENTS:

1. Tabulation of information from Houston Endowment Inc. returns filed with Internal Revenue Service
2. Copy of article from Editor and Publisher
3. Answers to questions from Subcommittee Press Release #5

HOUSTON ENDOWMENT INC.
HOUSTON, TEXAS
E.I. #74-6013920

INFORMATION FROM TAX
RETURN OF PRIVATE FOUNDATION,
INTERNAL REVENUE SERVICE
FORM 990-PF FOR YEAR

	1977	1978	1979	1980	1981	1982*	SIX-YEAR TOTAL
MARKET VALUE OF ASSETS AT YEAR END	$241,038,083	$265,909,021	$236,282,589	$262,599,169	$234,929,215	$270,000,000	
DISTRIBUTABLE AMOUNT							
Adjusted Net Income	$ 11,273,587	$ 13,857,196	$ 14,024,317	$ 13,535,882	$ 20,500,201	$ 20,406,349	
Minimum Investment Return (Part VIII, Line 6)	11,960,379	12,381,737	13,083,522	12,234,230	12,961,171	13,297,500	
Excise Tax on Investment Income	(541,066)	(509,860)	(279,634)	(329,142)	(711,878)	(400,000)	
Income Tax on Unrelated Business Income	-	-	(907)	-	-	-	
	$ 11,419,313	$ 13,347,336	$ 13,743,776	$ 13,206,740	$ 19,788,323	$ 12,897,500	$ 84,402,988
QUALIFYING DISTRIBUTIONS							
Grants Paid	$ 11,561,119	$ 12,397,926	$ 13,658,464	$ 15,380,487	$ 18,817,156	$ 18,763,536	
Allowable Administrative Expenses	331,044	285,456	282,441	279,037	314,582	325,000	
	$ 11,892,163	$ 12,683,382	$ 13,940,905	$ 15,659,636	$ 19,131,738	$ 19,088,536	$ 93,396,858

*Form 990-PF for year 1982 has not yet been filed, and calculation of actual amounts to be entered on return has not been completed. Accordingly, the amounts reported on the return when filed may vary slightly from the estimated information shown.

E&P
September 1, 1979
Every Saturday since 1884

Senate panel is told why newspaper groups continue to grow in the U.S.

Golden Dozen to Baker's Dozen—there are now 13 newspaper groups in the United States that qualify for membership in the millionaires' club (those whose aggregate weekday circulation exceeds one million copies).

These 13 groups (or "chains" as they are called in congressional hearings and academic treatises) had ABC-certified weekday sales of 26.268.955 copies and Sunday sales of 27,529,095 as of September 30, 1978 audits. The totals represent about 42 percent of U.S. daily circulation and 50% of Sunday circulation. Group newspapers have been responsible for a large part of the upward surge in Sunday circulation by adding scores of Sunday editions.

In this annual compilation based on statistics in the *1979 Editor & Publisher International Year Book*, the Knight-Ridder group holds its place as No. 1 in aggregate circulation with 34 dailies in 25 markets. Gannett became a close second, the merger with Combined Communications Corp. adding two major papers—*Oakland Tribune* and *Cincinnati Enquirer*—for a total of 80 in 68 markets.

Also in the 3-million class. Newhouse Newspapers (29 in 22 markets) was not far behind Gannett nor was the Tribune Company (9 in 9 markets). Acquisition of the *Hartford Courant* moved Times-Mirror over the 2-million mark.

Eleven groups have aggregate weekday circulation of more than 500.000 copies. They are:

Pulliam in four markets.
Copley in eight markets.
Evening News (Detroit) in four markets.
Freedom in 30 markets.
Harte-Hanks in 22 markets.
Independent (McLean et al) in four markets.
Lee in 21 markets.
Media General in four markets.
Murdoch in two markets.
Washington Post in three markets.
Landmark in eight markets.

One aspect of newspaper ownership is attracting greater attention by advocates of legislation to curb monopoly. That is the extent to which the Newspaper Preservation Act of 1971 provides anti-trust exemption in group newspaper business operations. Of the 20 situations where joint arrangements are protected, group owners are partners in 16. Gannett Company recently acquired controlling interest in the printing corporation by switching from the Banner to the Tennessean in Nashville.

The four situations where both partners in the joint plant operation are local independents are in Fort Wayne, Ind., Tulsa, Okla., Franklin-Oil City, Pa. and Salt Lake City, Utah. Gannett is a partner with non-group papers in Honolulu, Shreveport, La. and Nashville; with Pulitzer in Tucson and with Scripps-Howard in El Paso. An application for approval of a Gannett-Scripps tieup in Cincinnati has been before the Department of Justice for more than a year.

Scripps-Howard is involved in six partnerships—Pittsburgh (with Block), Albuquerque (with a non-group owner). Columbus, O. (with a non-group owner), Knoxville (with non-group owner). Birmingham (with Newhouse) and El Paso (with Gannett). Newhouse and Pulitzer have a joint operation in St. Louis. Hearst and an independent have a joint arrangement in San Francisco. Lee and independents share plants in Madison, Wis. and Lincoln, Neb. Knight-Ridder and Cox have a joint arrangement in Miami and Clay operates with an independent in Charleston, W. Va.

A review of the Newspaper Preservation Act (originally called the Failing Newspaper Act) would be an item on the agenda of a government commission which Rep. Morris K. Udall of Arizona proposes to study the level of competition in publishing and other industries. Sen. Gary Hart of Colorado and Sen. Larry Pressler of South Dakota are co-authors with Udall of the Competition Review Act authorizing a five-year study. A similar bill, providing for a three-year study, failed to attract much support in the last Congress.

Millionaires' Club

Group	No. of dailies	Circulation Weekday	Circulation Sunday	No. of markets
1. Knight-Ridder	34	3,732,191	4,347,532	25
2. Gannett	80	3,390,136	3,396,253	68
3. Newhouse	29	3,229,320	3,302,888	22
4. Tribune	9	3,158,220	4,312,919	9
5. Times Mirror	7	2,061,467	2,484,528	7
6. Dow Jones	21	1,946,448	325,840	21
7. Scripps-Howard	17	1,898,440	1,553,644	16
8. Hearst	10	1,442,992	2,195,716	9
9. Cox	19	1,295,382	1,263,420	13
10. Thomson	64	1,076,717	640,882	64
11. Cowles	10	1,025,237	1,392,121	8
12. Capital Cities	8	1,010,012	744,266	5
13. New York Times	10	1,002,393	1,569,092	10

The trend toward group purchases of family-owned independent newspapers continues this year, according to the number of sales reported in E&P. In seven months of this year 38 daily newspapers changed hands and 34 of them have gone into groups. They include five dailies of the Lindsay-Schaub group that went to Lee Enterprises and two Carter Glass properties that joined the Worrell list.

So the actual number of groups has declined from 167 in 1978 to 164 this year. A group, by E&P definition, is composed of two or more dailies in different markets under common ownership.

In current transactions three notable family enterprises have been transferred to wide-ranging groups. They are the *Buffalo* (N.Y.) *Courier Express*, the Conners family's morning-Sunday paper bought by the Cowles interests of Minneapolis and Des Moines; the *Nashville Tennessean*, morning-Sunday, which Gannett takes over from the Evans family in a deal which puts the *Nashville Banner*, evening, into the hands of a local group; and the *Hartford* (Conn.) *Courant*, morning-Sunday, for which Times-Mirror Company of California is paying about $105 million to a large number of shareholders. The Courant price, incidentally, tops the amount paid by Capital Cities Communications Inc. for the *Kansas City Star* and *Times*—$96 million after divesting two paper-making concerns—in 1977.

This year's transactions have focused attention on the growth of groups in one state—Florida. The purchase of the *Winter Haven News-Chief* by Multimedia Corp. left only six dailies out of 41 in local ownership. Multimedia became the 14th "national" group to own a daily newspaper in Florida.

Meanwhile, in Washington, the staff of the U.S. Senate

(Continued on page 14)

Newspaper groups continue to grow

(Continued from page 9)

Select Committee on Small Business has been considering the question of how much longer a 25,000-circulation daily such as the *Salisbury* (N.C.) *Post* might resist tempting offers from a group and remain a family operation.

Third-generation publisher James F. Hurley III told his answer to that question in a document which is a part of the thick file of testimony recorded by the committee. In December, the chairman, U.S. Senator Robert Morgan of North Carolina, has promised a full report to the public on what it has learned about the state of the newspaper industry and what could be done by legislation to stem the tide toward concentration of ownership of the free press.

Morgan opened the special inquiry declaring that "there appears to be more misinformation than good information." He wanted to know, he said, what is the makeup of the newspaper industry . . . what is the government position regarding it . . . how do the chains operate and carry out editorial policy . . . when does concentration of ownership become a true threat to freedom of the press . . . and what is the state of competition between the newspapers and other communication media.

"Many people who wish to start papers are small businessmen and these hearings will better acquaint them with the possibilities and pitfalls," Senator Morgan remarked. "Many small businessmen enter the newspaper business with the intention of selling out to a chain at some point and then retiring. Many do not and wish to pass the paper on to their children but find they cannot."

Jim Hurley, whose family has owned the Salisbury Post since 1912, provided the committee with a factual—though hypothetical—case history of two newspapers (*Family Times* and *Family News*), one of which was sold to a group. His presentation to the committee follows, in part:

Newspaper A (Family Times) has circulation of 25,000 and does a business of $3 million per year. Its advertising rate is $2 per inch and its subscription price is $4 per month. (These figures are very low).

Out of its operating revenues, Family Times earns 20 percent or $600,000 before taxes. The owners of the community paper elect to put 10 percent of pre-tax profits into a profit-sharing plan for employes and 5 percent into local charities, etc. Thus the taxable revenue is about $500,000, half of which is left for the owners.

Internal Revenue Service has "strongly recommended" that the company pay half of its net earnings in dividends because it can't prove a need for retaining much more than the allowable $150,000. Family Times, IRS says, is not using its retained earnings to buy other newspapers so it can't justify more than $1 million in retained earnings.

Thus only $125,000 is paid in dividends to owners who have other income and find themselves in the 60 percent tax bracket. Therefore, $75,000 of the dividends from the newspaper go to pay federal income taxes; leaving the five owners $50,000 to share.

The press, purchased 10 years ago for $500,000, cannot be replaced for $500,000 allowed as depreciation. A new press of the same capacity would cost $2 million. Thus, Family Times must set aside all of its undistributed profits for 12 years merely to replace the press.

Meanwhile, Newspaper B (Family News) is located 20 miles down the road. It also has a circulation of 25,000, an advertising rate of $3 per inch, and a subscription price of $4 per month and annual revenues of $3 million. It has 20 owners, all descendants of the original owner. Ten still live in town, but 10 have scattered to various parts of the country.

Disgusted with their return of $2,500 in after-tax dividends (50,000 divided by 20), the out-of-town nieces, nephews and cousins demand more money. Family News has its annual stockholders meeting and faces three options:

1. It can operate as it always has operated, paying some dividends and investing the remainder in new equipment and in its employes and its community.

2. Tighten up by eliminating any investment in employe benefits (i.e. profit sharing) or the community or in saving its profits for re-investment and thus, pay out all after tax earnings in dividends. This pleases, at least temporarily, the cousins but management realizes it will take its toll in efficiency as each year goes by.

3. Sell the paper for $20 million to Group Communications, Inc.

After much heated debate, the stockholders decide on Option 2. Fewer benefits for employes. Little community involvement. No money set aside to replace equipment.

Soon Family News realizes it has made a disastrous choice. Employes, not having the advancement opportunities on a single paper they have on a group newspaper, demand more money and security for the same jobs. The community feels the newspaper no longer helps with worthwhile causes and thus the paper loses some key support. Most importantly, Family News' press begins breaking down more and more often. Its production equipment begins to be outmoded. Its profits begin to dip, and Family News must make a huge investment to remain profitable. Since money has not been set aside to replace this equipment, Aunt Susie in San Francisco must come up with an investment of $200,000 or go on a note of that amount as her share to keep the paper profitable. Other stockholders must provide an equal amount.

The Family News, whether it decides on Option 3 immediately or delays sale by taking Option 2, sooner or later will get around to Option 3, i.e. selling the paper to Group Communications, Inc.

How can Group Communications, Inc., profit by paying $20 million for the Family News?

Group Communications, Inc., borrows $20 million to pay to stockholders of Family News. This costs Group Commo $2 million per year in interest. Therefore it is tax deductible if Group Commo can make a before tax profit of $2 million in Family News, which we shall now call Group News.

Group Commo, Inc., noting that the advertising and circulation rates are extremely low, raises the advertising rate 50 percent to $3 an inch and the subscription rates to $6 per month. Group News now has an income of $4.5 million versus the old Family News' income of $3 million. (Because of the increase, some customers quit initially but Group Commo finds some efficiencies, so the changes balance out.)

Since Group Commo, Inc., does not improve the paper materially, other than through its own expertise, expenses of Group News remain the same as that of the old Family News. As a result, Group News earns $600,000, plus all the increase in revenues brought in by the rate increases. Income becomes $2.1 million before taxes, not $600,000.

Group Commo Inc., the parent company, will pay off the principal either out of its 50 other profitable newspapers, the profits over and above the $2 million interest and/or with inflation. Taxes, because of interest expense, are zero.

Meanwhile, what happened to the 20 owners? Each received $1 million from the sale. Let's say capital gains cost 25 percent or $250,000 for each of the stockholders. Each one received $750,000 after tax. He invests the money in tax-free bonds at 6 percent. Aunt Susie's income now is $45,000 after each tax year instead of $2,500. Why shouldn't she sell?

Group Communications Inc., taking advantage of legislation which saves the company money, operates Group News very efficiently. It may even make improvements because corporate headquarters can supply experts in everything.

ANSWERS OF HOUSTON ENDOWMENT INC.
TO QUESTIONS POSED IN PRESS
RELEASE NO. 5 DATED MAY 3, 1983,
ISSUED BY SUBCOMMITTEE ON OVERSIGHT -
COMMITTEE ON WAYS AND MEANS

I. FOUNDATION PROFILE QUESTIONS

(A) What role do private foundations play in private philanthropy?

Answer: Attached hereto are lists reflecting all grants made by Endowment during 1981 and 1982.

(B) How are private foundations responding to the President's call for increased voluntarism and private sector initiative in light of reduced Federal spending?

Answer: Endowment's activities are reflected from the lists attached hereto.

(C) What are the sources of funding for private foundations?

Answer: Endowment's source of funding is income from investments and properties conveyed to Endowment by Jesse H. Jones and his wife, Mary Gibbs Jones, the creators of Endowment. Endowment is not currently soliciting or accepting additional contributions.

(D) What philanthropic activities are private foundations undertaking?

Answer: The philanthropic activities of Endowment are reflected from the attached lists.

(E) Who are recipients of the charitable distributions of private foundations?

Answer: The recipients of the charitable distributions of Endowment are reflected from the attached lists.

(F) What are private foundations' payout rates for qualifying charitable distributions?

Answer: During 1982 Endowment paid out $18,763,536, which was 6.95% of the market value of Endowment's assets at the end of that year.

(G) What types of assets do private foundations have, and what is the rate of return on each type of asset?

Answer: Endowment's assets consist primarily of bonds and corporate stocks. Endowment also has other assets which were conveyed to it by Jesse H. Jones and his wife, Mary Gibbs Jones, the creators of Endowment. The rate of return on Endowment's assets varys from year to year, and the rate of return is substantially the same as the payout rate of 6.95% stated above.

(H) What types of investments do private foundations engage in, and what investment policies guide their decision-making regarding investment selections?

Answer: Endowment's investments are confined to bonds and corporate stocks. Its investment policy is to purchase securities which provide the highest rate of return consistent with a high degree of safety.

(I) What portion of the qualifying distributions of private foundations represent administrative expenses, particularly trustee compensation?

Answer: During 1982 Endowment's administrative expenses were $325,000, and Trustees' compensation was $14,000. These figures represent 1.73% and 0.07% respectively of the Qualifying Distributions of Endowment during such year.

(J) What has been the effect of the Tax Reform Act of 1969 on the operations, vitality and growth of private foundations?

Answer: Except as is otherwise noted in the statement to which these questions and answers are attached, it is Endowment's view that the Tax Reform Act of 1969 had no effect on Endowment's operations, vitality and growth.

(K) Is avoidance of private foundation status a factor that is considered in deciding upon the format for philanthropic activities? If so, why?

Answer: Endowment has no information bearing on the answer to the foregoing question.

(L) What type of public disclosure and accountability are afforded by private foundations, and how helpful is it to potential grantees and to the public in general?

Answer: Endowment issues a biennial report which includes a discussion of the purpose for which Endowment is organized, the policies and procedures observed by Endowment's management, a description of the scholarship programs maintained by Endowment, a list of all grants made by Endowment, and audited financial statements of Endowment. Endowment believes that such report has been found to be satisfactory by potential grantees and the public in general since no criticism or complaint has been received by Endowment with regard to such report.

II. ISSUES RELATING TO PRESENT STATUTORY STRUCTURE

A. Divestiture Requirement for Business Holdings Acquired by Gift or Bequest

1. What foundations have divestiture problems with regard to excess business holdings, and why?

Answer: Endowment's divestiture problem is discussed in detail in the statement to which these questions and answers are appended.

2. Are there any circumstances under which relief from the divestiture rules would be appropriate?

Answer: This question is answered in the statement to which these questions and answers are appended.

3. If such circumstances do exist, what form of relief is warranted:

Answer: This question is answered in the statement to which these questions and answers are appended.

B. Definitions of Disqualified Persons

1. Are any statutory definitions of disqualified persons unnecessarily stringent or overbroad?

Answer: Endowment believes that the statutory definitions of disqualified persons are appropriate.

2. If so, what definitions are they and how should they be limited?

Answer: No answer is required in view of the answer to the preceding question.

C. Expenditure Responsibility

1. To what degree are private foundations administratively burdened in exercising expenditure responsibility?

Answer: As indicated below, Endowment has avoided grants which would require the exercise of expenditure responsibility. Endowment believes the requirement for expenditure responsibility places too great a burden on the private foundation and that it would subject the foundation and the foundation managers to potential liability and responsibility which should be avoided.

2. To what degree do the expenditure responsibility requirements influence foundations' grant-making decisions?

Answer: Since the enactment of the Tax Reform Act of 1969, Endowment has avoided making grants which would require the exercise of expenditure responsibility.

3. Should the expenditure responsibility requirements be eased, and if so, in what manner?

Answer: Expenditure responsibility should not be required of the donor organization. Adequate protection would be obtained by requiring that the donor and the grantee organization enter into a written agreement that the grantee organization follow the requirements of the Internal Revenue Code and that the sanctions for violations be imposed solely on the grantee organization.

D. Penalty Taxes

1. Are there circumstances in which the automatic imposition of the first-level penalty taxes is unwarranted?

Answer: The automatic first-level penalty tax is unwarranted in those cases where the Foundation might be contesting, in good faith, provisions of the Internal Revenue Code or regulations thereunder. This is particularly true where there would be no other effective means available to the Foundation to have a judicial construction of the law.

2. Should the Secretary of the Treasury be authorized to abate the first-level penalties?

Answer: The Secretary of the Treasury should be authorized to abate the first-level penalties in those cases where the Foundation is contesting a provision of the law or the regulations.

3. What type of abatement mechanism could be authorized which would in no way lessen compliance with the rules?

Answer: The penalty should be abated when the taxpayer is contesting a provision of the law or its effect on the Foundation.

E. Two-Percent Excise Tax

1. Is the collection of the 2 percent tax still in keeping with the purpose for which it was originally intended?

Answer: Endowment has no information bearing on the answer to the foregoing question.

2. How are the revenues raised by this tax being used?

Answer: Endowment has no information bearing on the answer to the foregoing question.

3. To what degree does the 2 percent tax erode the resources available to Endowment for charitable purposes?

Answer: The 2 percent tax has reduced the resources available to Endowment for charitable purposes by the amount of the tax.

F. Declaratory Judgment Procedure

Is the availability of the declaratory judgment procedure too restrictive?

Answer: The availability of a declaratory judgment procedure to test provisions of the Internal Revenue Code regarding private foundations is uncertain or doubtful, at best. It is inconceivable that a clear remedy in the nature of a declaratory judgment action is not available.

G. Administration of the Statutory Rules by the Internal Revenue Service

1. Is the "10-percent public support" test set forth in the regulations relating to the definition of private foundation too restrictive?

Answer: The 10-percent public support test has created no problem for Endowment.

(a) Should certain organizations which fail to meet the "10-percent" test nevertheless be excluded from private foundation status?

Answer: See the answer to the foregoing question.

(b) In what ways should the Form 990-PF, Return of Private Foundations, be improved?

Answer: Endowment has had no problems with the Form 990-PF, Return of Private Foundations.

(c) Should the regulatory restrictions on reliance by a private foundation on an IRS ruling as to the public status of a potential grantee be modified? If so, how?

Answer: Endowment feels that the regulatory restrictions on reliance by private foundation on an IRS ruling as to the public status of a potential grantee is satisfactory and has created no problems for Endowment.

H. Compliance

1. To what extent are private foundations complying with the rules set forth in 1969?

Answer: Endowment is complying with the rules set forth in 1969. It has no information as to what other private foundations are doing.

2. Have the 1969 rules succeeded in eliminating the abuses the rules were intended to address?

Answer: Endowment does not feel that abuses existed with respect to its operations which required the 1969 rules. It has no information about alleged abuses with respect to other foundations.

3. Are there any ways in which the current rules can be so manipulated that an organization may avoid private foundation status and the restrictions that follow such status?

Answer: Endowment knows of no ways in which the current rules can be manipulated so that an organization can avoid private foundation status and the restrictions that follow such status.

I. Simplification

How can existing law be simplified?

Answer: The existing law is most complex and creates significant expense and administrative burden on private foundations. Efforts should be made to reduce or eliminate the myriad of restrictions which limit the charitable activities of private foundations.

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	 Payments (Refunds)	Unpaid 12-31-81
ABA Fund for Public Education, American Bar Association, The Second Century Fund	Chicago, Ill.	EO	Toward public service programs	$ 125,000		$ 125,000	
Abilene Christian University	Abilene, Texas	SC	JHJ & MGJ Scholarships		$ 5,000	5,000	
Abilene Christian University	Abilene, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Aldine Independent School District	Houston, Texas	SC	Scholarships for eight students-1977	1,000	(1,000)		
Aldine Independent School District	Houston, Texas	SC	Scholarships for eight students-1978	7,000		7,000	
Aldine Independent School District	Houston, Texas	SC	Scholarships for eight students-1979	16,000		8,000	$ 8,000
Aldine Independent School District	Houston, Texas	SC	Scholarships for eight students-1980	24,000		8,000	16,000
Aldine Independent School District	Houston, Texas	SC	Scholarships for ten students-1981		40,000	10,000	30,000
Alief Independent School District	Houston, Texas	SC	Scholarships for two students-1978	2,000		2,000	
Alief Independent School District	Houston, Texas	SC	Scholarships for four students-1979	9,000		4,000	5,000
Alief Independent School District	Houston, Texas	SC	Scholarships for four students-1980	12,000		4,000	8,000
Alief Independent School District	Houston, Texas	SC	Scholarships for four students-1981		16,000	4,000	12,000
L'Alliance Francaise	Houston, Texas	SC	1981 Scholarship program		2,000	2,000	
Amarillo Area Foundation, Inc.	Amarillo, Texas	CO	Toward establishment of nursing and retirement center		25,000	25,000	
Amarillo Art Center Association	Amarillo, Texas	EO	Toward endowment program		50,000	50,000	
American Bar Association	Houston, Texas	EO	For Litigation Section's Special Committee for the study of discovery abuse		20,000	20,000	
American Cancer Society	Houston, Texas	EO	Operating funds		5,000	5,000	
American Diabetes Association	Houston, Texas	EO	Operating funds		1,000	1,000	
American Field Service, Inc.	New York, N.Y.	SC	Scholarships in International Program		2,000	2,000	
American Heart Association, Texas Affiliate	Austin, Texas	EB	Toward construction of facilities		500,000	500,000	
American Heart Association, Houston Chapter	Houston, Texas	EO	Operating funds		8,500	8,500	
American Red Cross, Galveston County Chapter	Galveston, Texas	CO	Operating funds		50,000	50,000	
American Red Cross, Houston-Harris County Chapter	Houston, Texas	CO	Operating funds		25,000	25,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
Anti-Defamation League of B'nai B'rith	Houston, Texas	CO	Toward 1981 Torch of Liberty Award		$ 5,000	$ 5,000	
The Arthritis Foundation	Houston, Texas	EO	Operating funds		5,000	5,000	
Asbury Theological Seminary	Wilmore, Ky.	SC	JHJ Scholarships in Christian Service		2,250	2,250	
Austin College	Sherman, Texas	PF	John T. Jones Chair of Economics		35,000	35,000	
Austin College	Sherman, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Baylor College of Medicine	Houston, Texas	EI	Student instruction		10,000	10,000	
Baylor College of Medicine, Dept. of Ophthalmology	Houston, Texas	SC	Residency training program in basic sciences		16,620	16,620	
Baylor College of Medicine	Houston, Texas	EO	Operating funds		30,000	30,000	
Baylor College of Medicine	Houston, Texas	EB	Toward construction of an animal laboratory & research facility		2,000,000	1,000,000	$ 1,000,000
Baylor University	Waco, Texas	SC	Scholarship program in the Department of Home Economics		25,000	25,000	
Baylor University	Waco, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Berea College	Berea, Kentucky	SC	Mary Gibbs Jones Educational Grant, scholarships in nursing		7,500	7,500	
Bishop College	Dallas, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
The Blue Bird Circle	Houston, Texas	CO	Pediatric Neurological Clinic at Methodist Hospital, Houston		4,000	4,000	
Bootstrap Ranch, Inc.	Fort Worth, Texas	EO	Operating funds		30,000	30,000	
Boy Scouts of America, Sam Houston Area Council	Houston, Texas	EO	"Scout-Reach" program		35,000	35,000	
Boys Country of Houston, Inc.	Hockley, Texas	EO	Operating funds		10,000	10,000	
Boys Harbor	La Porte, Texas	CO	Operating funds		1,000	1,000	
Buckner Baptist Benevolences	Dallas, Texas	CB	Toward construction of a children's residence cottage		450,000	450,000	
Building Owners & Managers Institute International, Inc.	Philadelphia, Pa.	EO	Educational program		15,000	15,000	
Burnett-Bayland Home	Houston, Texas	CO	Operating funds		1,000	1,000	
Cal Farley's Boys Ranch	Amarillo, Texas	CO	Operating funds		1,000	1,000	
Carson County Square House Museum	Panhandle, Texas	EO	Toward endowment fund		50,000	50,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
Centenary College of Louisiana	Shreveport, La.	SC	JMJ & MGJ Scholarships		$ 4,000	$ 4,000	
The Children's Heart Institute of South Texas	Corpus Christi, Texas	CO	Operating funds		25,000	25,000	
Christian Child Help Foundation	Houston, Texas	CO	Toward expenses of move		64,125	64,125	
Clear Creek Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1978	$ 4,000		4,000	
Clear Creek Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1979	8,000		4,000	$ 4,000
Clear Creek Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1980	12,000		4,000	8,000
Clear Creek Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1981		16,000	4,000	12,000
Close Up Foundation	Washington, D.C.	EO	Support of educational program		15,000	15,000	
Columbia University	New York, N.Y.	FS	International Fellows Program		1,500	1,500	
The Committee for the Mayor's Neighborhood Fair & Crime Prevention Forum	Houston, Texas	CO	Operating funds		1,000	1,000	
Converse College	Spartanburg, S.C.	SC	MGJ Scholarships for Women		1,000	1,000	
Cypress-Fairbanks Independent School District	Houston, Texas	SC	Scholarships for five students-1978	5,000		5,000	
Cypress-Fairbanks Independent School District	Houston, Texas	SC	Scholarships for five students-1979	10,000	(4,000)	3,000	$ 3,000
Cypress-Fairbanks Independent School District	Houston, Texas	SC	Scholarships for seven students-1980	21,000		7,000	14,000
Cypress-Fairbanks Independent School District	Houston, Texas	SC	Scholarships for seven students-1981		28,000	7,000	21,000
Del Mar College	Corpus Christi, Texas	EO	Memorial fund		10,000	10,000	
Dimmit County United Fund	Carrizo Springs, Texas	EO	Operating funds		5,000	5,000	
Diocese of Galveston	Houston, Texas	SC	Scholarships for eight students-1978	8,000		8,000	
Diocese of Galveston	Houston, Texas	SC	Scholarships for eight students-1979	16,000		8,000	8,000
Diocese of Galveston	Houston, Texas	SC	Scholarships for eight students-1980	24,000		7,000	17,000
Diocese of Galveston	Houston, Texas	SC	Scholarships for eight students-1981		32,000	8,000	24,000

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
Easter Seal Society	Houston, Texas	EO	In honor of Marcella D. Perry		$ 5,000	$ 5,000	
The Ector County Library	Odessa, Texas	EB	Toward construction of "Centennial Plaza"		58,000	58,000	
Eliza Johnson Center for the Aging, Inc.	Houston, Texas	CO	Operating Funds		25,000	25,000	
Family Service Center	Houston, Texas	CB	Toward construction of central office facility	$ 250,000		250,000	
Fayette County Mental Health and Mental Retardation Agency, Inc.	LaGrange, Texas	CB	Toward expansion of facilities		125,000	125,000	
First Christian Church	Odessa, Texas	RO	Memorial fund		10,000	10,000	
Galena Park Independent School Dist.	Houston, Texas	SC	Scholarships for six students-1978	5,000		5,000	
Galena Park Independent School Dist.	Houston, Texas	SC	Scholarships for six students-1979	11,000	(3,000)	4,000	$ 4,000
Galena Park Independent School Dist.	Houston, Texas	SC	Scholarships for six students-1980	18,000		6,000	12,000
Galena Park Independent School Dist.	Houston, Texas	SC	Scholarships for six students-1981		24,000	6,000	18,000
Galveston Historical Foundation, Inc.	Galveston, Texas	EO	Toward restoration of the ELISSA		250,000	250,000	
Globe of the Great Southwest	Odessa, Texas	EB	Toward new air conditioning system		19,222	19,222	
Good Samaritan Foundation	Houston, Texas	SC	Nursing Scholarship Program		1,000	1,000	
Hardin-Simmons University	Abilene, Texas	SC	JHJ & MGJ Scholarships		7,500	7,500	
Hardin-Simmons University	Abilene, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Harding University	Searcy, Arkansas	SC	JHJ & MGJ Scholarships		5,000	5,000	
Harding University	Searcy, Arkansas	EB	Toward completion of the School of Business		30,000	30,000	
Hendrix College	Conway, Arkansas	SC	JHJ & MGJ Scholarships		4,000	4,000	
Hermann Hospital Development Fund	Houston, Texas	CB	Toward completion of eighth floor, Jones Pavilion for medical-surgical patients		2,500,000	500,000	2,000,000

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity		Unpaid 12-31-81
					Commitments (Cancelled)	Payments (Refunds)	
Hermann Hospital Development Fund	Houston, Texas	CB	Toward completion of the ninth floor, Jones Pavilion for the Texas Kidney Institute		$ 2,500,000	$ 500,000	$ 2,000,000
Hermann Hospitaloan Foundation	Houston, Texas	EI	Student instruction		35,000	35,000	
The Hill School	Pottstown, Pa.	SC	Preparatory school scholarships		4,000	4,000	
Hispanic International University, Inc./University Without Walls	Houston, Texas	SC	JHJ & MGJ Scholarship Program		50,000	50,000	
Holly Hall	Houston, Texas	CO	Operating funds		2,000	2,000	
Holly Hall	Houston, Texas	CE	Toward renovation of infirmary		25,000	25,000	
Houston Area Parkinsonism Society	Houston, Texas	EO	Operating funds		3,000	3,000	
Houston Audubon Society	Houston, Texas	EO	Operating funds		5,000	5,000	
Houston Ballet Foundation	Houston, Texas	EO	Operating funds		37,500	37,500	
Houston Baptist University	Houston, Texas	EO	School of Nursing	$ 150,000	150,000	150,000	150,000
Houston Baptist University	Houston, Texas	SC	Freshmen scholarships		12,000	12,000	
Houston Botanical Society	Houston, Texas	EO	Educational program for school children		5,000	5,000	
City of Houston Parks Board	Houston, Texas	CO	Support of activities		1,500	1,500	
City of Houston Police Department	Houston, Texas	EI	Project S.T.A.R.		6,000	6,000	
Houston Grand Opera Association	Houston, Texas	EO	Toward capital fund drive		75,000	75,000	
Houston Gulf Coast Billy Graham Crusade, Inc.	Houston, Texas	RO	Support for Houston Crusade		25,000	25,000	
Houston Humane Society	Houston, Texas	CO	Operating funds		7,500	7,500	
Houston Independent School Dist.	Houston, Texas	SC	Scholarships for 104 students-1977	8,000	(8,000)		
Houston Independent School Dist.	Houston, Texas	SC	Scholarships for 104 students-1978	92,000	(17,000)	72,000	3,000
Houston Independent School Dist.	Houston, Texas	SC	Scholarships for 100 students-1979	195,000	(24,500)	81,500	89,000
Houston Independent School Dist.	Houston, Texas	SC	Scholarships for 100 students-1980	302,000	(10,000)	85,000	207,000
Houston Independent School Dist.	Houston, Texas	SC	Scholarships for 99 students-1981		388,000	97,000	291,000
Houston Livestock Show & Rodeo	Houston, Texas	EO	Purchase of scramble calves		1,600	1,600	
Houston Festival Foundation, Inc.	Houston, Texas	EO	Operating funds		2,500	2,500	
Houston Museum of Natural Science	Houston, Texas	EB	Toward construction of first floor addition		500,000	500,000	
Houston Museum of Natural Science	Houston, Texas	EO	Memorial fund		5,000	5,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
Houston Pops Orchestra	Houston, Texas	EO	Free concerts in public parks		$ 20,000	$ 20,000	
Houston Symphony Society	Houston, Texas	EO	Maintenance fund		100,000	100,000	
University of Houston	Houston, Texas	SC	JHJ & MGJ Vocational & Technical Scholarships		7,500	7,500	
University of Houston	Houston, Texas	SC	Fred J. Heyne Scholarships		10,000	10,000	
University of Houston, Clear Lake City	Houston, Texas	SC	JHJ & MGJ Scholarships		10,000	10,000	
University of Houston, Downtown College	Houston, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Howard Payne University	Brownwood, Texas	SC	"Douglas MacArthur Academy of Freedom" Scholarships		3,000	3,000	
Howard Payne University	Brownwood, Texas	SC	JHJ & MGJ Scholarships		1,875	1,875	
Howard Payne University	Brownwood, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
The Hundred Club of Houston	Houston, Texas	CO	Operating funds		2,000	2,000	
Huston-Tillotson College	Austin, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Incarnate Word College	San Antonio, Texas	SC	JHJ & MGJ Scholarship Program		25,000	25,000	
Institute of International Education, Inc.	Houston, Texas	EO	Operating funds		10,000	10,000	
Institute of Religion and Human Development	Houston, Texas	SC	Scholarships in ministry and medical ethics		30,000	30,000	
Jarvis Christian College	Hawkins, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Jewish Federation of Greater Houston, Inc.	Houston, Texas	EO	Operating funds		2,500	2,500	
Jewish Federation of Greater Houston, Inc.	Houston, Texas	EB	Toward construction of building		100,000	100,000	
John Brown University	Siloam Spring, Arkansas	SC	Scholarships		7,500	7,500	
Junior Achievement	Houston, Texas	EO	Operating funds		6,000	6,000	
Junior League of Houston, Inc.	Houston, Texas	CO	Operating funds		2,000	2,000	
Juvenile Justice, Inc.	Houston, Texas	EO	Support of Juvenile Justice/Mock Trial Program		32,700	32,700	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
Katy Independent School District	Houston, Texas	SC	Scholarships for two students-1978	$ 2,000		$ 2,000	
Katy Independent School District	Houston, Texas	SC	Scholarships for two students-1979	4,000		2,000	$ 2,000
Katy Independent School District	Houston, Texas	SC	Scholarships for two students-1980	6,000		2,000	4,000
Katy Independent School District	Houston, Texas	SC	Scholarships for two students-1981		$ 8,000	2,000	6,000
The Kinkaid School	Houston, Texas	SC	Scholarship for one student-1977	1,000	(1,000)		
The Kinkaid School	Houston, Texas	SC	Scholarship for one student-1978	1;000		1,000	
The Kinkaid School	Houston, Texas	SC	Scholarship for one student-1979	2,000		1,000	1,000
The Kinkaid School	Houston, Texas	SC	Scholarship for one student-1980	3,000		1,000	2,000
The Kinkaid School	Houston, Texas	SC	Scholarship for one student-1981		4,000	1,000	3,000
Knights Templar Eye Foundation, Inc.	Springfield, Ill.	EO	Operating funds		15,000	15,000	
Latino Learning Center	Houston, Texas	EB	Toward renovation of new facilities		20,000	20,000	
Lena Pope Home, Inc.	Fort Worth, Texas	CB	Toward construction of Activities/ Administration Center	50,000		50,000	
Leukemia Society of America, Inc.	Houston, Texas	CO	Operating funds		5,000	5,000	
The Living Bank International	Houston, Texas	CO	Toward comprehensive education project		50,000	50,000	
Lon Morris College	Jacksonville, Texas	SC	JHJ & MGJ Scholarships		5,000	5,000	
Lon Morris College	Jacksonville, Texas	SC	Elizabeth & Eddy Scurlock Scholarships		10,000	10,000	
Lutheran High School	Houston, Texas	SC	Scholarship for one student-1978	1,000		1,000	
Lutheran High School	Houston, Texas	SC	Scholarship for one student-1979	2,000		1,000	1,000
Lutheran High School	Houston, Texas	SC	Scholarship for one student-1980	3,000		1,000	2,000
Lutheran High School	Houston, Texas	SC	Scholarship for one student-1981		4,000	1,000	3,000
The Madonna Church	San Antonio, Texas	RO	Operating funds		1,000	1,000	
University of Mary Hardin-Baylor	Belton, Texas	SC	MGJ Scholarships in Liberal Arts and Sciences		5,000	5,000	
University of Mary Hardin-Baylor	Belton, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Memorial Hall High School	Houston, Texas	EE	Toward purchase of equipment		48,400	48,400	
Mental Health-Mental Retardation Center for Galveston County	Galveston, Texas	CB	Toward acquisition of work shop, research & demonstration center		302,500	302,500	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
Midland-Odessa Symphony & Chorale, Inc.	Midland, Texas	EO	Operating funds		$ 25,000	$ 25,000	
The Museum of Fine Arts of Houston	Houston, Texas	EO	Maintenance funds		75,000	75,000	
The Museum of Fine Arts of Houston	Houston, Texas	EO	Toward the JHJ & MGJ Exhibition Fund		500,000	500,000	
McMurry College	Abilene, Texas	SC	JHJ & MGJ Scholarships		5,000	5,000	
McMurry College	Abilene, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
The National College of District Attorneys	Houston, Texas	EI	Development & maintenance of Resource Center		25,000	25,000	
The National Conference of Christians and Jews, Inc.	Houston, Texas	RO	Awards sponsorship		2,500	2,500	
The National Foundation - Metro Houston Chapter - March of Dimes	Houston, Texas	EO	Operating funds		1,000	1,000	
National Multiple Sclerosis	Houston, Texas	EO	Operating funds		5,000	5,000	
Neighborhood Justice, Inc.	Houston, Texas	EO	Toward program for resolving disputes outside formal Justice system		50,000	50,000	
University of New Brunswick	Fredericton, New Brunswick, Canada	SC	Beaverbrook Scholarship for the study of Historical Relations with the State of Maine		6,000	6,000	
North Forest Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1978	$ 3,000		2,000	$ 1,000
North Forest Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1979	8,000		3,000	5,000
North Forest Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1980	12,000		4,000	8,000
North Forest Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1981		16,000	4,000	12,000
University of Notre Dame	Notre Dame, Ind.	PF	JHJ Professorship in Commerce		100,000	100,000	
Odessa Family YMCA	Odessa, Texas	EO	Memorial fund		10,000	10,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
Pasadena Independent School Dist.	Houston, Texas	SC	Scholarships for eight students-1978	$ 9,000		$ 9,000	
Pasadena Independent School Dist.	Houston, Texas	SC	Scholarships for eight students-1979	17,000	$ (3,000)	7,000	$ 7,000
Pasadena Independent School Dist.	Houston, Texas	SC	Scholarships for eight students-1980	24,000		8,000	16,000
Pasadena Independent School Dist.	Houston, Texas	SC	Scholarships for eight students-1981		32,000	8,000	24,000
Paul Quinn College	Waco, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Piney Woods Country Life School	Piney Woods, Miss.	EO	Operating funds		1,000	1,000	
Planned Parenthood Center of Houston, Inc.	Houston, Texas	EO	Operating funds		30,000	30,000	
Prairie View A&M University	Prairie View, Texas	EO	Operating funds		75,000	75,000	
Prairie View A&M University	Prairie View, Texas	SC	JHJ & MGJ Scholarships in Fine Arts and Music		6,000	6,000	
Prairie View A&M University	Prairie View, Texas	SC	JHJ Scholarships in Agriculture		7,500	7,500	
Prairie View A&M University	Prairie View, Texas	SC	MGJ Scholarships in Home Economics		7,500	7,500	
Prairie View A&M University	Prairie View, Texas	SC	A. Jeannette Jones Nursing Scholarships		7,500	7,500	
Prairie View A&M University	Prairie View, Texas	SC	Dr. E. B. Evans Scholarships in Liberal Arts and Sciences		6,000	6,000	
Prairie View A&M University	Prairie View, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Professional United Leadership League, Inc.	Houston, Texas	EO	Operating funds		67,053	67,053	
Progressive Amateur Boxing Assn.	Houston, Texas	EO	Operating funds		10,000	10,000	
Public Advocacy Center, Inc.	Houston, Texas	SC	Scholarship program		20,000	20,000	
Randolph-Macon Woman's College	Lynchburg, Va.	SC	MGJ Scholarships		4,500	4,500	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
Rice University	Houston, Texas	SC	JHJ Naval Scholarships honoring Fleet Admiral William F. Halsey, Jr.		$ 1,500	$ 1,500	
Rice University	Houston, Texas	SC	JHJ Naval Scholarships honoring General Alexander A. Vandergrift, USMC		1,500	1,500	
Rice University	Houston, Texas	EO	Jesse H. Jones Graduate School of Administration		500,000	500,000	
Rice University	Houston, Texas	EB	Toward construction of building for Jesse H. Jones Graduate School of Administration		3,500,000	700,000	$ 2,800,000
Rotary Club Activities of Houston and Harris County	Houston, Texas	SC	JHJ Scholarships		5,000	5,000	
Rotary Club Activities of Houston and Harris County	Houston, Texas	EO	Operating funds		1,000	1,000	
St. Anthony Center	Houston, Texas	CE	Toward purchase of equipment and building repair		305,200	305,200	
St. Edward Hospital	Cameron, Texas	CE	Toward purchase of equipment		10,000	10,000	
St. Edward's University	Austin, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
St. Elizabeth Hospital of Houston Foundation	Houston, Texas	CB	Toward ICU/CCU project		250,000	250,000	
St. John's College	Santa Fe, N.M.	SC	JHJ & MGJ Scholarships in Liberal Arts and Sciences		4,000	4,000	
St. John's School	Houston, Texas	SC	Scholarship for one student-1978	$ 1,000		1,000	
St. John's School	Houston, Texas	SC	Scholarship for one student-1979	2,000		1,000	1,000
St. John's School	Houston, Texas	SC	Scholarship for one student-1980	3,000		1,000	2,000
St. John's School	Houston, Texas	SC	Scholarship for one student-1981		4,000	1,000	3,000
St. John's School	Houston, Texas	SC	Advanced study for faculty members		5,000	5,000	
St. Joseph Hospital Foundation	Houston, Texas	CB	Toward Women's Building for Obstetrical and Gynocological Services		1,000,000	500,000	500,000
St. Joseph Hospital Foundation	Houston, Texas	CO	Operating funds		1,800	1,800	
St. Joseph Hospital Foundation	Houston, Texas	FS	Fellowship in Clinical Pastoral Education Program		12,000	12,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	 Payments (Refunds)	Unpaid 12-31-81
St. Mary's School	Lawton, Oklahoma	EO	Operating Funds		$ 1,000	$ 1,000	
St. Mary's University	San Antonio, Texas	EE	Toward furnishing Teaching/Learning Center		450,000	450,000	
St. Mary's University	San Antonio, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
St. Paul Industrial Training School	Malakoff, Texas	EO	Operating funds and capital improvement		26,000	26,000	
St. Paul's United Methodist Church	Houston, Texas	RO	Operating funds		1,200	1,200	
St. Paul's United Methodist Church	Houston, Texas	RO	Houston Methodist Board of Missions "Room to Grow" program		5,000	5,000	
University of St. Thomas	Houston, Texas	SC	JHJ & MGJ Scholarships		4,500	4,500	
University of St. Thomas	Houston, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
University of St. Thomas	Houston, Texas	EB	Toward construction of an athletic center		500,000	250,000	$ 250,000
The Salvation Army	Houston, Texas	CO	Operating funds		1,000	1,000	
The Salvation Army Boys' Club Scholarship Fund	Houston, Texas	SC	Scholarship for "Boy of the Year"	$ 3,000	3,000	3,000	3,000
The Salvation Army Boys' Club of Houston	Houston, Texas	EO	Summer program for underprivileged youth		41,529	41,529	
Sam Houston State University	Huntsville, Texas	SC	JHJ & MGJ Scholarships in Liberal & Graphic Arts, Arts & Sciences		9,000	9,000	
Sam Houston State University	Huntsville, Texas	SC	President's Discretionary Fund for Student Assistance		2,500	2,500	
Sam Houston State University	Huntsville, Texas	FS	Chriminal Justice Fellowships		60,000	60,000	
San Jacinto Lung Association	Houston, Texas	EO	Operating funds		1,000	1,000	
Scott & White Memorial Hospital & Scott Sherwood & Brindley Foundation	Temple, Texas	SC	Scholarships in Nursing		50,000	50,000	

					1981 Activity		
Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	Commitments (Cancelled)	Payments (Refunds)	Unpaid 12-31-81
Scott & White Memorial Hospital & Scott Sherwood & Brindley Foundation	Temple, Texas	CO	Toward expanding & improving Perinatal Center		$ 500,000	$ 500,000	
Seton Medical Center	Austin, Texas	CE	Toward purchase of equipment		200,000	100,000	$ 100,000
Sheldon Independent School Dist.	Houston, Texas	SC	Scholarships for two students-1978	$ 3,000	(2,000)	1,000	
Sheldon Independent School Dist.	Houston, Texas	SC	Scholarships for two students-1979	4,000		2,000	2,000
Sheldon Independent School Dist.	Houston, Texas	SC	Scholarships for two students-1980	6,000		2,000	4,000
Sheldon Independent School Dist.	Houston, Texas	SC	Scholarships for two students-1981		8,000	2,000	6,000
Shriners Hospitals for Crippled Children	Houston, Texas	CO	Memorial fund		5,000	5,000	
Shriners Hospitals for Crippled Children	Galveston, Texas	FS	Fellowships in plastic surgery at Burns Institute		29,000	29,000	
Shriners Hospitals for Crippled Children	Houston, Texas	CE	Toward furnishing new building		71,000	71,000	
South Texas College of Law	Houston, Texas	EB	Toward building addition		1,000,000	500,000	500,000
South Texas College of Law	Houston, Texas	SC	JHJ Scholarships		70,000	70,000	
University of Southern California	Los Angeles, Ca.	SC	JHJ & MGJ Scholarships		25,000	25,000	
Southern Methodist University	Dallas, Texas	SC	JHJ & MGJ Scholarships		15,000	15,000	
Southern Methodist University	Dallas, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Southwest Foundation for Research & Education	San Antonio, Texas	EE	Toward purchase of research equipment	300,000		300,000	
Southwestern Diabetic Foundation, Inc.	Gainesville, Texas	EO	Educational program		2,000	2,000	
Southwestern Legal Foundation	Dallas, Texas	EO	Educational program of the Southwestern Law Enforcement Institute		5,000	5,000	
Southwestern University	Georgetown, Texas	SC	JHJ & MGJ Scholarships - business and/or professional		3,750	3,750	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
Southwestern University	Georgetown, Texas	SC	The Herman Brown Scholarships in Liberal Arts and Sciences		$ 1,800	$ 1,800	
Southwestern University	Georgetown, Texas	SC	Margaret Root Brown Scholarships in Liberal Arts and Sciences		1,800	1,800	
Southwestern University	Georgetown, Texas	SC	JHJ & MCJ Endowed Scholarships		50,000	50,000	
Southwestern University	Georgetown, Texas	EB	Toward remodeling and renovation of the Fondren Science Hall	$ 500,000		500,000	
Spring Branch Independent School District	Houston, Texas	SC	Scholarships for twelve students-1977	1,000	(1,500)	(500)	
Spring Branch Independent School District	Houston, Texas	SC	Scholarships for twelve students-1978	12,000	(1,000)	11,000	
Spring Branch Independent School District	Houston, Texas	SC	Scholarships for twelve students-1979	24,000		13,000	$ 11,000
Spring Branch Independent School District	Houston, Texas	SC	Scholarships for twelve students-1980	36,000		12,000	24,000
Spring Branch Independent School District	Houston, Texas	SC	Scholarships for twelve students-1981		48,000	12,000	36,000
Star of Hope Mission	Houston, Texas	RO	Operating funds		1,000	1,000	
Star of Hope Mission	Houston, Texas	RO	Toward purchase of equipment		9,113	9,113	
Texana Presbyterian Church Restoration	Edna, Texas	EB	Toward restoration of old church building		5,000	5,000	
Texas A&M University	College Station, Texas	SC	JHJ Scholarships in Agriculture		7,500	7,500	
Texas A&M University	College Station, Texas	EO	Student Conference on National Affairs		3,000	3,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
Texas A&M University	College Station, Texas	EO	Student Leadership Conference		$ 1,000	$ 1,000	
Texas Architectural Foundation	Houston, Texas	SC	Scholarships in Architecture		9,000	9,000	
Texas Children's Hospital	Houston, Texas	CO	Operating funds		5,000	5,000	
Texas Christian University	Fort Worth, Texas	EB	Toward expansion of library	$ 250,000		250,000	
Texas Christian University	Fort Worth, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Texas College	Tyler, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Texas Institute of Letters	Denton, Texas	EO	Prize for "Best Texas Novel" by a Texan or about Texas	1,000	1,000	1,000	$ 1,000
The Texas Interscholastic League Foundation	Austin, Texas	SC	Scholarship program	25,000	25,000	25,000	25,000
Texas Jaycee Hospital Foundation, Inc.	Gonzales, Texas	EO	Operating funds		26,000	26,000	
Texas Lutheran College	Seguin, Texas	SC	JHJ Scholarships		5,000	5,000	
Texas Lutheran College	Seguin, Texas	EB	Toward renovation & improvement of Alumni Student Center		500,000	500,000	
Texas Lutheran College	Seguin, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
The Texas Methodist Conference	Houston, Texas	RO	Operating funds for Golden Cross		1,200	1,200	
Texas Municipal Courts Foundation, Inc.	Houston, Texas	EO	Toward seminar and workshop at Sam Houston State University		10,000	10,000	
Texas Research League	Austin, Texas	EO	Operating funds		1,000	1,000	
Texas Society for the Prevention of Blindness, Inc.	Houston, Texas	EO	Operating funds		5,000	5,000	
Texas Society to Prevent Blindness	Houston, Texas	EB	Building maintenance fund		15,000	15,000	
Texas Southern University	Houston, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
University of Texas at Austin	Austin, Texas	EO	To endow the College of Communication		5,000,000	1,000,000	4,000,000

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	 Payments (Refunds)	Unpaid 12-31-81
University of Texas at Austin	Austin, Texas	SC	JHJ Scholarships in Engineering		$ 12,500	$ 12,500	
University of Texas at Austin	Austin, Texas	SC	JHJ & MGJ Scholarships in Fine Arts		15,000	15,000	
University of Texas at Austin	Austin, Texas	EO	Toward Art Museum's exhibition fund		10,000	10,000	
University of Texas at Austin	Austin, Texas	SC	JHJ Scholarships in Journalism		6,000	6,000	
University of Texas at Austin	Austin, Texas	SC	Martin Emmet Walter Scholarships in Journalism		5,000	5,000	
University of Texas at Austin	Austin, Texas	EO	Public Affairs Reporting Program		10,000	10,000	
University of Texas at Austin	Austin, Texas	EO	Toward "The Frank C. Erwin, Jr. Chair in State Government"		200,000	200,000	
University of Texas at Austin	Austin, Texas	SC	JHJ Naval Scholarships honoring Fleet Admiral Ernest J. King		1,500	1,500	
University of Texas at Austin	Austin, Texas	SC	JHJ Naval Scholarships honoring Admiral Chester W. Nimitz		1,500	1,500	
University of Texas at Dallas	Richardson, Texas	EO	Toward lecture series on Moral Values of a Free Society		20,000	10,000	$ 10,000
University of Texas at El Paso	El Paso, Texas	SC	JHJ & MGJ Scholarships		15,000	15,000	
University of Texas Medical Branch	Galveston, Texas	EB	Toward construction of "The Learning Center"	$ 200,000		200,000	
University of Texas Medical Branch	Galveston, Texas	EB	Toward restoration of Ashbel Smith Building		500,000	250,000	250,000
University of Texas Health Science Center at Houston	Houston, Texas	FS	JHJ Fellowships in Oral Surgery		17,919	17,919	
University of Texas Health Science Center at Houston	Houston, Texas	FS	John A. Beck Fellowships honoring Dr. Jack Bange and Dr. Tina Bange		6,000	6,000	
University of Texas Health Science Center at Houston	Houston, Texas	EO	Residency program in orthopedics at Shriners Hospital for Crippled Children		22,000	22,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity		Unpaid 12-31-81
					Commitments (Cancelled)	Payments (Refunds)	
University of Texas Health Science Center at Tyler	Tyler, Texas	EE	Toward purchase of equipment		$ 75,000	$ 75,000	
University of Texas System Cancer Center - M.D. Anderson Hospital and Tumor Institute	Houston, Texas	FS	JHJ Fellowship in Cancer Education honoring Dr. E. W. Bertner		10,000	10,000	
University of Texas of the Permian Basin	Odessa, Texas	SC	JHJ & MGJ Work-Scholarships		25,000	25,000	
University of Texas Institute of Texan Cultures	San Antonio, Texas	EO	Operating funds		20,000	20,000	
Texas Wesleyan College	Fort Worth, Texas	SC	Scholarships in Liberal Arts and Sciences		5,000	5,000	
Texas Wesleyan College	Fort Worth, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Texas Women's University	Denton, Texas	SC	MGJ Scholarships in Home Economics or Music		7,500	7,500	
Texas Women's University	Denton, Texas	SC	MGJ Scholarships in Nursing Education		12,000	12,000	
Trinity University	San Antonio, Texas	SC	JHJ Scholarships honoring John Nance Garner in the field of Public Affairs		5,000	5,000	
Trinity University	San Antonio, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Trinity University	San Antonio, Texas	EO	Establishment of Jesse H. Jones Chair in Business Administration	$ 250,000		250,000	
Tuskegee Institute	Tuskegee Institute, Ala.	SC	JHJ Scholarships in business and/or professional fields		4,000	4,000	
Union y Progreso Barrio Development, Inc.	Houston, Texas	EB	Toward building program		340,000	340,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-81	1981 Activity Commitments (Cancelled)	1981 Activity Payments (Refunds)	Unpaid 12-31-81
United Fund of Houston and Harris County	Houston, Texas	EO	Operating funds	$ 132,000	$ 144,000	$ 132,000	$ 144,000
United Negro College Fund	Dallas, Texas	EO	Operating funds		15,000	15,000	
Val Verde Memorial Hospital	Del Rio, Texas	EO	Toward establishment of an Associatd Degree Registered Nurse Program		5,000	5,000	
Vanderbilt University	Nashville, Tenn.	SC	JHJ & MGJ Scholarships in Graduate School of Management		15,000	15,000	
Vietnam Veterans Memorial Fund, Inc.	Washington, D.C.	CO	Toward National Memorial		50,000	50,000	
Volunteers of America	Houston, Texas	CO	Operating funds		1,000	1,000	
Volunteers Services Council, Austin State Hospital	Austin, Texas	CO	Operating funds		1,000	1,000	
Wiley College	Marshall, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
William Carey College	Hattiesburg, Miss.	SC	JHJ & MGJ Scholarships in College of Arts and Sciences		1,500	1,500	
Young Audiences Inc. of Houston	Houston, Texas	EO	Maintenance funds		3,500	3,500	
Young Men's Christian Association	Beaumont, Texas	EB	Toward expansion program		50,000	50,000	
Young Men's Christian Association	Galveston, Texas	EE	Toward purchase of equipment		20,000	20,000	
Young Men's Christian Association	Houston, Texas	EO	Memberships for underprivileged youths		10,000	10,000	
Young Women's Christian Association	El Paso, Texas	EE	Toward purchase of equipment		69,000	69,000	
Young Women's Christian Association	Houston, Texas	EB	Toward completion of downtown facility		400,000	400,000	
Youth Shelter of Galveston, Inc.	Galveston, Texas	EO	Youth services		5,000	5,000	
The Zoological Society of Houston	Houston, Texas	EB	Toward construction of facilites		100,000	100,000	
				$ 3,236,000	$30,314,156	$18,817,156	$14,733,000

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity		Unpaid 12-31-82
					Commitments (Cancelled)	Payments (Refunds)	
Abilene Christian University	Abilene, Texas	SC	JHJ & MGJ Endowed Scholarships		$ 50,000	$ 50,000	
Aldine Independent School District	Houston, Texas	SC	Scholarships for eight students-1979	$ 8,000		7,000	$ 1,000
Aldine Independent School District	Houston, Texas	SC	Scholarships for eight students-1980	16,000		8,000	8,000
Aldine Independent School District	Houston, Texas	SC	Scholarships for ten students-1981	30,000	(4,000)	8,000	18,000
Aldine Independent School District	Houston, Texas	SC	Scholarships for ten students-1982		40,000	10,000	30,000
Alief Independent School District	Houston, Texas	SC	Scholarships for four students-1979	5,000		3,000	2,000
Alief Independent School District	Houston, Texas	SC	Scholarships for four students-1980	8,000	(2,000)	3,000	3,000
Alief Independent School District	Houston, Texas	SC	Scholarships for four students-1981	12,000		4,000	8,000
Alief Independent School District	Houston, Texas	SC	Scholarships for four students-1982		16,000	4,000	12,000
L'Alliance Francaise	Houston, Texas	SC	1982 Scholarship program		2,000	2,000	
Amarillo Area Foundation, Inc.	Amarillo, Texas	EE	Toward equipment for the Amarillo Medical Center		150,000	150,000	
American Cancer Society	Houston, Texas	EO	Operating funds		5,000	5,000	
American Field Service, Inc.	New York, N.Y.	SC	Scholarships in International Program		4,000	4,000	
American Heart Association, Texas Affiliate	Austin, Texas	EB	Toward construction of facilities		200,000	200,000	
American Red Cross, Houston-Harris County Chapter	Houston, Texas	CO	Operating funds		300,000	300,000	
Anti-Defamation League of B'nai B'rith	Houston, Texas	CO	Operating funds		5,000	5,000	
The Arthritis Foundation	Houston, Texas	EO	Operating funds		5,000	5,000	
The Arthritis Institute of the National Orthopedic & Rehabilitation Hospital	Arlington, Va.	EO	Fellowship endowment		200,000	200,000	
Asbury Theological Seminary	Wilmore, Ky.	SC	JHJ Scholarships in Christian Service		5,000	5,000	
Austin College	Sherman, Texas	PF	John T. Jones Chair of Economics		35,000	35,000	
Austin College	Sherman, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Backstage, Inc.	Schulenburg, Texas	EB	Toward construction of multi-purpose community center building		10,000	10,000	
Baylor College of Medicine	Houston, Texas	EI	Student instruction		10,000	10,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
Baylor College of Medicine, Dept. of Ophthalmology	Houston, Texas	SC	Residency training program in basic sciences		$ 20,366	$ 20,366	
Baylor College of Medicine	Houston, Texas	EB	Toward construction of an animal laboratory & research facility	$1,000,000		1,000,000	
Baylor Medical Foundation	Houston, Texas	EO	Memorial fund		10,000	10,000	
Baylor University	Waco, Texas	EB	Toward construction of a fine arts complex		720,000	360,000	$ 360,000
Baylor University	Waco, Texas	SC	Scholarship program in the Department of Home Economics		25,000	25,000	
Baylor University	Waco, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Berea College	Berea, Kentucky	SC	Mary Gibbs Jones Educational Grant, scholarships in nursing		10,000	10,000	
Bishop College	Dallas, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
The Blue Bird Circle	Houston, Texas	CO	Pediatric Neurological Clinic at Methodist Hospital, Houston		4,000	4,000	
Boy Scouts of America, Sam Houston Area Council	Houston, Texas	EO	"Scout-Reach" program		50,000	50,000	
Boys Country of Houston, Inc.	Hockley, Texas	EO	Operating funds		10,000	10,000	
Boys Harbor	La Porte, Texas	CO	Operating funds		1,000	1,000	
Building Owners & Managers Institute International, Inc.	Arnold, Maryland	EO	Educational program		15,000	15,000	
Burnett-Bayland Home	Houston, Texas	CO	Operating funds		1,000	1,000	
Cal Farley's Boys Ranch	Amarillo, Texas	CO	Operating funds		1,000	1,000	
Centenary College of Louisiana	Shreveport, La	SC	JHJ & MGJ Scholarships		4,000	4,000	
Center for Public Policy	Houston, Texas	EO	Leland Professional Internship Program for Congressional & Senate Offices		20,000	20,000	
The Children's Heart Institute of South Texas	Corpus Christi, Texas	CO	Operating funds		25,000	25,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
Clear Creek Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1979	$ 4,000		$ 4,000	
Clear Creek Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1980	8,000		4,000	$ 4,000
Clear Creek Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1981	12,000		4,000	8,000
Clear Creek Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1982		$ 16,000	4,000	12,000
Close Up Foundation	Arlington, Va.	EO	Support of educational program		15,000	15,000	
Congregation Beth Israel	Houston, Texas	RO	Memorial fund		5,000	5,000	
Converse College	Spartanburg, S.C.	SC	MGJ Scholarships for Women		2,000	2,000	
Cypress-Fairbanks Independent School District	Houston, Texas	SC	Scholarships for five students-1979	3,000		3,000	
Cypress-Fairbanks Independent School District	Houston, Texas	SC	Scholarships for seven students-1980	14,000		7,000	7,000
Cypress-Fairbanks Independent School District	Houston, Texas	SC	Scholarships for seven students-1981	21,000		7,000	14,000
Cypress-Fairbanks Independent School District	Houston, Texas	SC	Scholarships for seven students-1982		28,000	7,000	21,000
Dimmit County United Fund	Carrizo Springs, Texas	EO	Operating funds		6,000	6,000	
Diocese of Galveston	Houston, Texas	SC	Scholarships for eight students-1979	8,000		8,000	
Diocese of Galveston	Houston, Texas	SC	Scholarships for eight students-1980	17,000		8,500	8,500
Diocese of Galveston	Houston, Texas	SC	Scholarships for eight students-1981	24,000		8,000	16,000
Diocese of Galveston	Houston, Texas	SC	Scholarships for eight students-1982		32,000	8,000	24,000
Duchesne Academy of the Sacred Heart	Houston, Texas	EB	Toward construction of a fine arts center		150,000	75,000	75,000
Easter Seal Society	Houston, Texas	EO	Operating funds		5,000	5,000	
First Presbyterian Church of Houston	Houston, Texas	RO	Memorial fund		5,000	5,000	
Galena Park Independent School District	Houston, Texas	SC	Scholarships for six students-1979	4,000		4,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
Galena Park Independent School District	Houston, Texas	SC	Scholarships for six students-1980	$ 12,000	$ (2,000)	$ 5,000	$ 5,000
Galena Park Independent School District	Houston, Texas	SC	Scholarships for six students-1981	18,000		5,000	13,000
Galena Park Independent School District	Houston, Texas	SC	Scholarships for six students-1982		24,000	6,000	18,000
Galveston Children's Home & Emergency Shelter	Galveston, Texas	CO	Operating funds		50,000	50,000	
Galveston County Cultural Arts Council, Inc.	Galveston, Texas	EB	Building repairs		27,000	27,000	
Galveston Historical Foundation, Inc.	Galveston, Texas	EO	Toward restoration of the ELISSA		250,000	250,000	
Georgetown University	Washington, D. C.	EO	Support of the Center for Strategic and International Studies		25,000	25,000	
Good Samaritan Foundation	Houston, Texas	SC	Nursing Scholarship Program		1,000	1,000	
Good Samaritan Foundation	Houston, Texas	CO	Memorial fund		10,000	10,000	
Hardin-Simmons University	Abilene, Texas	SC	JHJ & MGJ Scholarships		7,500	7,500	
Hardin-Simmons University	Abilene, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Harding University	Searcy, Arkansas	SC	JHJ & MGJ Scholarships		5,000	5,000	
Hendrix College	Conway, Arkansas	SC	JHJ & MGJ Scholarships		4,000	4,000	
Hermann Hospital Development Fund	Houston, Texas	CB	Toward completion of eighth floor, Jones Pavilion for medical-surgical patients	2,000,000		500,000	1,500,000
Hermann Hospital Development Fund	Houston, Texas	CB	Toward completion of the ninth floor, Jones Pavilion for the Texas Kidney Institute	2,000,000		500,000	1,500,000
Hermann Hospital Development Fund	Houston, Texas	CO	Memorial fund		5,000	5,000	
Hermann Hospitaloan Foundation	Houston, Texas	EI	Student instruction		35,000	35,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
The Hill School	Pottstown, Pa.	SC	Preparatory school scholarships		$ 8,000	$ 8,000	
Hispanic International University, Inc./University Without Walls	Houston, Texas	SC	JHJ & MGJ Scholarship Program		55,000	55,000	
Holly Hall	Houston, Texas	CE	Toward renovation of infirmary		35,500	35,500	
Houston Area Parkinsonism Society	Houston, Texas	EO	Operating funds		23,000	23,000	
Houston Audubon Society	Houston, Texas	EO	Operating funds		10,000	10,000	
Houston Ballet Foundation	Houston, Texas	EO	Operating funds		37,500	37,500	
Houston Baptist University	Houston, Texas	EO	School of Nursing	$ 150,000	150,000	150,000	$ 150,000
Houston Baptist University	Houston, Texas	SC	Freshmen scholarships		12,000	12,000	
Houston Botanical Society	Houston, Texas	EO	Educational program for school children		5,000	5,000	
Houston Grand Opera Association	Houston, Texas	EO	Maintenance funds		50,000	50,000	
Houston Heights Association	Houston, Texas	EB	Toward completion of parks		50,000	50,000	
Houston Humane Society	Houston, Texas	CO	Operating funds		7,500	7,500	
Houston Independent School Dist.	Houston, Texas	SC	Scholarships for 104 students-1978	3,000	(2,000)	1,000	
Houston Independent School Dist.	Houston, Texas	SC	Scholarships for 100 students-1979	89,000	(11,500)	72,500	5,000
Houston Independent School Dist.	Houston, Texas	SC	Scholarships for 100 students-1980	207,000	(40,500)	76,500	90,000
Houston Independent School Dist.	Houston, Texas	SC	Scholarships for 99 students-1981	291,000	(15,000)	82,000	194,000
Houston Independent School Dist.	Houston, Texas	SC	Scholarships for 104 students-1982		416,000	104,000	312,000
Houston Livestock Show & Rodeo	Houston, Texas	EO	Purchase of scramble calves		2,400	2,400	
Houston Festival Foundation, Inc.	Houston, Texas	EO	Operating funds		5,000	5,000	
Houston Museum of Natural Science	Houston, Texas	EB	For construction of first floor addition		500,000	500,000	
Houston Pops Orchestra	Houston, Texas	EO	Free concerts in public parks		20,000	20,000	
Houston Regional Council on Alcoholism, Inc.	Houston, Texas	CO	Operating funds		5,000	5,000	
Houston School for the Deaf	Houston, Texas	EE	Toward purchase of equipment		42,100	42,100	
Houston Symphony Society	Houston, Texas	EO	Maintenance fund		100,000	100,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
University of Houston	Houston, Texas	SC	JHJ & MGJ Vocational & Technical Scholarships		$ 7,500	$ 7,500	
University of Houston	Houston, Texas	SC	Fred J. Heyne Scholarships		10,000	10,000	
University of Houston Foundation	Houston, Texas	SC	Toward endowing the Cullen Leadership Scholars Program		50,000	50,000	
University of Houston, Clear Lake City	Houston, Texas	SC	JHJ & MGJ Scholarships		10,000	10,000	
University of Houston, Downtown College	Houston, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Howard Payne University	Brownwood, Texas	SC	"Douglas MacArthur Academy of Freedom" Scholarships		3,000	3,000	
Howard Payne University	Brownwood, Texas	SC	JHJ & MGJ Scholarships		1,875	1,875	
Howard Payne University	Brownwood, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
The Hundred Club of Houston	Houston, Texas	CO	Operating funds		6,000	6,000	
The Hundred Club of Houston	Houston, Texas	CE	Purchase of equipment		20,000	20,000	
Huston-Tillotson College	Austin, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Incarnate Word College	San Antonio, Texas	SC	JHJ & MGJ Scholarship Program		25,000	25,000	
Institute of International Education, Inc.	Houston, Texas	EO	Operating funds		10,000	10,000	
The Institute for Rehabilitation and Research	Houston, Texas	CB	Toward addition to facility		500,000	250,000	$ 250,000
The Institute for Rehabilitation and Research	Houston, Texas	CO	Memorial fund		1,000	1,000	
Institute of Religion and Human Development	Houston, Texas	SC	Scholarships in ministry and medical ethics		30,000	30,000	
Jarvis Christian College	Hawkins, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
John Brown University	Siloam Spring, Arkansas	SC	Scholarships		7,500	7,500	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
Junior Achievement	Houston, Texas	EO	Operating funds		$ 6,000	$ 6,000	
Junior League of Houston, Inc.	Houston, Texas	CO	Operating funds		2,000	2,000	
Katy Independent School District	Houston, Texas	SC	Scholarships for two students-1979	$ 2,000		2,000	
Katy Independent School District	Houston, Texas	SC	Scholarships for two students-1980	4,000		2,000	$ 2,000
Katy Independent School District	Houston, Texas	SC	Scholarships for two students-1981	6,000		2,000	4,000
Katy Independent School District	Houston, Texas	SC	Scholarships for four students-1982		16,000	4,000	12,000
The Kinkaid School	Houston, Texas	SC	Scholarship for one student-1979	1,000		1,000	
The Kinkaid School	Houston, Texas	SC	Scholarship for one student-1980	2,000		1,000	1,000
The Kinkaid School	Houston, Texas	SC	Scholarship for one student-1981	3,000		1,000	2,000
The Kinkaid School	Houston, Texas	SC	Scholarship for one student-1982		4,000	1,000	3,000
Knights Templar Eye Foundation, Inc.	Springfield, Ill.	EO	Operating funds		15,000	15,000	
Leukemia Society of America, Inc.	Houston, Texas	CO	Operating funds		5,000	5,000	
The Living Bank International	Houston, Texas	CO	Toward comprehensive education project		50,000	50,000	
Lon Morris College	Jacksonville, Texas	SC	JHJ & MGJ Scholarships		5,000	5,000	
Lubbock Christian College	Lubbock, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Lutheran High School	Houston, Texas	SC	Scholarship for one student-1979	1,000		1,000	
Lutheran High School	Houston, Texas	SC	Scholarship for one student-1980	2,000		1,000	1,000
Lutheran High School	Houston, Texas	SC	Scholarship for one student-1981	3,000		1,000	2,000
Lutheran High School	Houston, Texas	SC	Scholarship for one student-1982		4,000	1,000	3,000
The Madonna Church	San Antonio, Texas	RO	Operating funds		1,000	1,000	
University of Mary Hardin-Baylor	Belton, Texas	SC	MGJ Scholarships in Liberal Arts and Sciences		5,000	5,000	
University of Mary Hardin-Baylor	Belton, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Medical Center Development Corporation, Inc.	Odessa, Texas	CE	Toward purchase of equipment		60,000	60,000	
Memorial Hall High School	Houston, Texas	EE	Toward purchase of equipment		52,000	52,000	
Mental Health-Mental Retardation Center for Galveston County	Galveston, Texas	CB	Toward acquisition of work shop, research & demonstration center		78,000	78,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
Midland-Odessa Symphony & Chorale, Inc.	Midland, Texas	EO	Operating funds		$ 25,000	$ 25,000	
The Museum of Fine Arts of Houston	Houston, Texas	EO	Maintenance funds		75,000	75,000	
The Museum of Fine Arts of Houston	Houston, Texas	EO	Toward the JHJ & MGJ Exhibition Fund		500,000	500,000	
The Museum of Fine Arts of Houston	Houston, Texas	EO	Toward publication of painting catalogue		100,000	100,000	
McMurry College	Abilene, Texas	SC	JHJ & MGJ Scholarships		5,000	5,000	
McMurry College	Abilene, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
The National College of District Attorneys	Houston, Texas	EI	Development & maintenance of Resource Center		25,000	25,000	
The National College of Probate Judges	Houston, Texas	EO	Toward endowment fund for Judicial Education Program		100,000	100,000	
The National Conference of Christians and Jews, Inc.	Houston, Texas	RO	Awards sponsorship		2,500	2,500	
The National Foundation - Metro Houston Chapter - March of Dimes	Houston, Texas	EO	Operating funds		1,000	1,000	
The National Jewish Hospital and Research Center	Denver, Colo.	CO	Operating funds		2,000	2,000	
National Multiple Sclerosis	Houston, Texas	EO	Operating funds		5,000	5,000	
University of New Brunswick	Fredericton, New Brunswick, Canada	SC	Beaverbrook Scholarship for the study of Historical Relations with the State of Maine		7,050	7,050	
North Forest Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1978	$ 1,000	(1,000)		
North Forest Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1979	5,000	(2,000)	3,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
North Forest Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1980	$ 8,000		$ 4,000	$ 4,000
North Forest Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1981	12,000		3,000	9,000
North Forest Independent School Dist.	Houston, Texas	SC	Scholarships for four students-1982		$ 16,000	4,000	12,000
University of Notre Dame	Notre Dame, Ind.	PF	JHJ Professorship in Commerce		100,000	100,000	
University of Notre Dame	Notre Dame, Ind.	EO	Toward establishment of the JHJ Faculty Research Fund		1,000,000	200,000	800,000
Odessa College	Odessa, Texas	EE	Toward equipment for petroleum technology program		25,000	25,000	
Pan American University	Edinburg, Texas	EO	Toward educational program		15,000	15,000	
Pasadena Independent School Dist.	Houston, Texas	SC	Scholarships for eight students-1979	7,000		6,000	1,000
Pasadena Independent School Dist.	Houston, Texas	SC	Scholarships for eight students-1980	16,000		8,000	8,000
Pasadena Independent School Dist.	Houston, Texas	SC	Scholarships for eight students-1981	24,000		8,000	16,000
Pasadena Independent School Dist.	Houston, Texas	SC	Scholarships for eight students-1982		32,000	8,000	24,000
Paul Quinn College	Waco, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Piney Woods Country Life School	Piney Woods, Miss.	EO	Operating funds		1,000	1,000	
Planned Parenthood Center of Houston, Inc.	Houston, Texas	EO	Operating funds		30,000	30,000	
Prairie View A&M University	Prairie View, Texas	EO	Operating funds		75,000	75,000	
Prairie View A&M University	Prairie View, Texas	SC	JHJ & MGJ Scholarships in Fine Arts and Music		6,000	6,000	
Prairie View A&M University	Prairie View, Texas	SC	JHJ Scholarships in Agriculture		7,500	7,500	
Prairie View A&M University	Prairie View, Texas	SC	MGJ Scholarships in Home Economics		7,500	7,500	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
Prairie View A&M University	Prairie View, Texas	SC	A. Jeannette Jones Nursing Scholarships		$ 7,500	$ 7,500	
Prairie View A&M University	Prairie View, Texas	SC	Dr. E. B. Evans Scholarships in Liberal Arts and Sciences		6,000	6,000	
Prairie View A&M University	Prairie View, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Professional United Leadership League, Inc.	Houston, Texas	EO	Operating funds		54,240	54,240	
Progressive Amateur Boxing Assn.	Houston, Texas	EO	Operating funds		10,000	10,000	
Public Interest Advocacy Center, Inc.	Houston, Texas	SC	Scholarship program		20,000	20,000	
Randolph-Macon Woman's College	Lynchburg, Va.	SC	MGJ Scholarships		6,000	6,000	
Rice University	Houston, Texas	SC	JHJ Naval Scholarships honoring Fleet Admiral William F. Halsey, Jr.		1,500	1,500	
Rice University	Houston, Texas	SC	JHJ Naval Scholarships honoring General Alexander A. Vandergrift, USMC		1,500	1,500	
Rice University	Houston, Texas	EO	Jesse H. Jones Graduate School of Administration		500,000	500,000	
Rice University	Houston, Texas	EB	Toward construction of building for Jesse H. Jones Graduate School of Administration	$2,800,000		700,000	$2,100,000
Rotary Club Activities of Houston and Harris County	Houston, Texas	SC	JHJ Scholarships		5,000	5,000	
Rotary Club Activities of Houston and Harris County	Houston, Texas	EO	Operating funds		1,000	1,000	
St. Anthony Center	Houston, Texas	CE	Toward purchase of equipment		25,000	25,000	
St. Edward Hospital	Cameron, Texas	CE	Toward purchase of equipment and expansion program		140,000	140,000	
St. Edward's University	Austin, Texas	SC	JHJ Scholarships		6,000	6,000	
St. Edward's University	Austin, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity		Unpaid 12-31-82
					Commitments (Cancelled)	Payments (Refunds)	
St. John's College	Santa Fe, N.M.	SC	JHJ & MGJ Scholarships in Liberal Arts and Sciences		$ 4,000	$ 4,000	
St. John's School	Houston, Texas	SC	Scholarship for one student-1979	$ 1,000		1,000	
St. John's School	Houston, Texas	SC	Scholarship for one student-1980	2,000		1,000	$ 1,000
St. John's School	Houston, Texas	SC	Scholarship for one student-1981	3,000		1,000	2,000
St. John's School	Houston, Texas	SC	Scholarship for one student-1982		4,000	1,000	3,000
St. John's School	Houston, Texas	SC	Advanced study for faculty members		5,000	5,000	
St. Joseph Hospital Foundation	Houston, Texas	CB	Toward Women's Building for Obstetrical & Gynocological Services	500,000		500,000	
St. Joseph Hospital Foundation	Houston, Texas	CO	Operating funds		2,100	2,100	
St. Joseph Hospital Foundation	Houston, Texas	FS	Fellowship in Clinical Pastoral Education Program		12,000	12,000	
St. Joseph Hospital Foundation	Houston, Texas	CO	Memorial fund		1,000	1,000	
St. Mary's School	Lawton, Oklahoma	EO	Operating funds		1,000	1,000	
St. Mary's University	San Antonio, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
St. Paul Industrial Training School	Malakoff, Texas	EO	Operating funds and capital improvement		51,000	51,000	
St. Paul's United Methodist Church	Houston, Texas	RO	Operating funds		1,200	1,200	
St. Paul's United Methodist Church	Houston, Texas	RO	Houston Methodist Board of Missions "Room to Grow" program		5,000	5,000	
St. Paul's United Methodist Church	Houston, Texas	RO	Memorial fund		10,000	10,000	
University of St. Thomas	Houston, Texas	SC	JHJ & MGJ Scholarships		4,500	4,500	
University of St. Thomas	Houston, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
University of St. Thomas	Houston, Texas	EB	Toward construction of an athletic center	250,000		250,000	
The Salvation Army	Houston, Texas	CO	Operating funds		1,000	1,000	
The Salvation Army Boys' Club Scholarship Fund	Houston, Texas	SC	Scholarship for "Boy of the Year"	3,000	3,000	3,000	3,000
The Salvation Army Boys' Club of Houston	Houston, Texas	EO	Summer program for underprivileged youth		47,611	47,611	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
The Salvation Army	Houston, Texas	CB	Toward construction of the Women's & Children's Residence		$ 350,000	$ 175,000	$ 175,000
Sam Houston State University	Huntsville, Texas	SC	JHJ & MGJ Scholarships in Liberal & Graphic Arts, Arts & Sciences		9,000	9,000	
Sam Houston State University	Huntsville, Texas	SC	President's Discretionary Fund for Student Assistance		2,500	2,500	
Sam Houston State University	Huntsville, Texas	FS	Criminal Justice Fellowships		60,000	60,000	
Sam Houston State University	Huntsville, Texas	EE	Toward purchase of equipment for Department of Geology		14,058	14,058	
San Jacinto Lung Association	Houston, Texas	EO	Operating funds		1,000	1,000	
Scott & White Memorial Hospital & Scott Sherwood & Brindley Foundation	Temple, Texas	SC	Scholarships in Nursing		50,000	50,000	
Seton Medical Center	Austin, Texas	CE	Toward purchase of equipment	$ 100,000		100,000	
Sheldon Independent School Dist.	Houston, Texas	SC	Scholarships for two students-1979	2,000		2,000	
Sheldon Independent School Dist.	Houston, Texas	SC	Scholarships for two students-1980	4,000		2,000	2,000
Sheldon Independent School Dist.	Houston, Texas	SC	Scholarships for two students-1981	6,000		1,000	5,000
Sheldon Independent School Dist.	Houston, Texas	SC	Scholarships for two students-1982		8,000	2,000	6,000
Shriners Hospitals for Crippled Children	Galveston, Texas	FS	Fellowships in plastic surgery at Burns Institute		32,800	32,800	
Shriners Hospitals for Crippled Children	Houston, Texas	CE	Toward purchase of equipment		90,000	90,000	
Shriners Hospitals for Crippled Children	Galveston, Texas	CE	Toward purchase of equipment for Burns Institute		296,440	296,440	
South Main Baptist Church	Houston, Texas	RO	Memorial fund		1,000	1,000	
South Main Center Association	Houston, Texas	CB	Toward the Jesse H. Jones Fountain		525,000	525,000	
South Texas College of Law	Houston, Texas	EB	Toward building addition	500,000		500,000	
South Texas College of Law	Houston, Texas	SC	JHJ Scholarships		35,000	35,000	
University of Southern California	Los Angeles, Calif.	SC	JHJ & MGJ Scholarships		25,000	25,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity		Unpaid 12-31-82
					Commitments (Cancelled)	Payments (Refunds)	
Southern Methodist University	Dallas, Texas	SC	JHJ & MGJ Endowed Scholarships		$ 50,000	$ 50,000	
Southwest Foundation for Research & Education	San Antonio, Texas	EB	Toward construction of a Cardiovascular Physiology Laboratory		625,000	625,000	
Southwestern Diabetic Foundation, Inc.	Gainesville, Texas	EO	Educational program		2,000	2,000	
Southwestern Legal Foundation	Dallas, Texas	EO	Educational program of the Southwestern Law Enforcement Institute		5,000	5,000	
Southwestern University	Georgetown, Texas	SC	JHJ & MGJ Scholarships - business and/or professional		3,750	3,750	
Southwestern University	Georgetown, Texas	SC	The Herman Brown Scholarships in Liberal Arts and Sciences		1,800	1,800	
Southwestern University	Georgetown, Texas	SC	Margaret Root Brown Scholarships in Liberal Arts and Sciences		1,800	1,800	
Southwestern University	Georgetown, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Southwestern University	Georgetown, Texas	EB	Toward the rehabilitation of the residence halls		5,000,000	1,000,000	$4,000,000
Spring Branch Independent School District	Houston, Texas	SC	Scholarships for twelve students-1979	$ 11,000		11,000	
Spring Branch Independent School District	Houston, Texas	SC	Scholarships for twelve students-1980	24,000		12,000	12,000
Spring Branch Independent School District	Houston, Texas	SC	Scholarships for twelve students-1981	36,000		12,000	24,000
Spring Branch Independent School District	Houston, Texas	SC	Scholarships for twelve students-1982		48,000	12,000	36,000
Star of Hope Mission	Houston, Texas	RO	Operating funds		1,000	1,000	
Texana Museum & Library Assocation	Edna, Texas	EB	Toward refurbishment of building		5,000	5,000	
Texas A&M University	College Station, Texas	SC	JHJ Scholarships in Agriculture		7,500	7,500	
Texas A&M University	College Station, Texas	EO	Student Conference on National Affairs		3,000	3,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
Texas A&M University	College Station, Texas	EO	Student Leadership Conference		$ 1,000	$ 1,000	
Texas Architectural Foundation	Houston, Texas	SC	Scholarships in Architecture		9,000	9,000	
Texas Children's Hospital	Houston, Texas	CO	Operating funds		5,000	5,000	
Texas Christian University	Fort Worth, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Texas College	Tyler, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Texas Heart Institute	Houston, Texas	CB	Toward expansion of facilities		2,000,000	1,000,000	$1,000,000
Texas Institute of Letters	Waco, Texas	EO	Prize for "Best Texas Novel" by a Texan or about Texas	$ 1,000	2,500	1,000	2,500
The Texas Interscholastic League Foundation	Austin, Texas	SC	Scholarship program	25,000	25,000	25,000	25,000
Texas Jaycee Hospital Foundation, Inc.	Gonzales, Texas	CO	Operating funds		30,000	30,000	
Texas Lutheran College	Seguin, Texas	SC	JHJ Scholarships		5,000	5,000	
Texas Lutheran College	Seguin, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Texas Lutheran College	Seguin, Texas	EB	Toward construction of Fine Arts Center		160,000	160,000	
The Texas Methodist Conference	Houston, Texas	RO	Operating funds for Golden Cross		1,200	1,200	
Texas Municipal Courts Foundation, Inc.	Houston, Texas	EO	Toward seminar and workshop at Sam Houston State University		10,000	10,000	
Texas Non-Profit Theatres	Midland, Texas	EO	Operating funds		16,000	16,000	
Texas Research League	Austin, Texas	EO	Operating funds		1,500	1,500	
Texas Society for the Prevention of Blindness, Inc.	Houston, Texas	EO	Operating funds		20,000	20,000	
Texas Southern University	Houston, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Texas Tech Dads Association	Lubbock, Texas	PP	Toward endowment for Distinguished Visiting Professor		25,000	25,000	
University of Texas at Austin	Austin, Texas	EO	To endow the College of Communication	4,000,000		1,000,000	3,000,000
University of Texas at Austin	Austin, Texas	SC	JHJ Scholarships in Engineering		12,500	12,500	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
University of Texas at Austin	Austin, Texas	SC	JHJ & MGJ Scholarships in Fine Arts		$ 15,000	$ 15,000	
University of Texas at Austin	Austin, Texas	SC	JHJ Scholarships in Journalism		6,000	6,000	
University of Texas at Austin	Austin, Texas	SC	Martin Emmett Walter Scholarships in Journalism		5,000	5,000	
University of Texas at Austin	Austin, Texas	EO	Public Affairs Reporting Program		10,000	10,000	
University of Texas at Austin	Austin, Texas	SC	JHJ Naval Scholarships honoring Fleet Admiral Ernest J. King		1,500	1,500	
University of Texas at Austin	Austin, Texas	SC	JHJ Naval Scholarships honoring Admiral Chester W. Nimitz		1,500	1,500	
University of Texas at Dallas	Richardson, Texas	EO	Toward lecture series on Moral Values in a Free Society	$ 10,000		10,000	
University of Texas at El Paso	El Paso, Texas	SC	JHJ & MGJ Scholarships		15,000	15,000	
University of Texas Medical Branch	Galveston, Texas	EB	Toward restoration of Ashbel Smith Building	250,000		250,000	
University of Texas Health Science Center at Houston	Houston, Texas	FS	JHJ Fellowships in Oral Surgery		27,246	27,246	
University of Texas Health Science Center at Houston	Houston, Texas	FS	John A. Beck Fellowships honoring Dr. Jack Bangs and Dr. Tina Bangs		6,000	6,000	
University of Texas Health Science Center at Houston	Houston, Texas	EO	Residency program in orthopedics at Shriners Hospital for Crippled Children		25,000	25,000	
University of Texas System Cancer Center - M.D. Anderson Hospital and Tumor Institute	Houston, Texas	FS	JHJ Fellowship in Cancer Education honoring Dr. E. W. Bertner		10,000	10,000	
University of Texas of the Permian Basin	Odessa, Texas	SC	JHJ & MGJ Work-Scholarships		25,000	25,000	

Donee	Address	Class of Activity	Description of Activity	Unpaid 1-1-82	1982 Activity Commitments (Cancelled)	1982 Activity Payments (Refunds)	Unpaid 12-31-82
University of Texas Institute of Texan Cultures	San Antonio, Texas	EO	Operating funds		$ 20,000	$ 20,000	
Texas Wesleyan College	Fort Worth, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Texas Woman's University	Denton, Texas	SC	MGJ Scholarships in Home Economics or Music		7,500	7,500	
Texas Woman's University	Denton, Texas	SC	MGJ Scholarships in Nursing Education		12,000	12,000	
Trinity University	San Antonio, Texas	SC	JHJ Scholarships honoring John Nance Garner in the field of Public Affairs		5,000	5,000	
Trinity University	San Antonio, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Tuskegee Institute	Tuskegee Institute, Alabama	SC	JHJ Scholarships in business and/or professional fields		4,000	4,000	
Union y Progreso Barrio Development, Inc.	Houston, Texas	EO	Operating funds		336,000	336,000	
United Cerebral Palsy of Texas Gulf Coast, Inc.	Houston, Texas	EO	Operating funds		5,000	5,000	
United Fund of Houston and Harris County	Houston, Texas	EO	Operating funds	$ 144,000	152,000	144,000	$ 152,000
United Negro College Fund, Inc,	Houston, Texas	EO	Operating funds		15,000	15,000	
Vanderbilt University	Nashville, Tenn.	SC	JHJ & MGJ Scholarships in Graduate School of Management		15,000	15,000	
Volunteers of America	Houston, Texas	CO	Operating funds		1,000	1,000	
Volunteers Services Council, Austin State Hospital	Austin, Texas	CO	Operating funds		1,000	1,000	
Wayland Baptist University	Plainview, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
Wiley College	Marshall, Texas	SC	JHJ & MGJ Endowed Scholarships		50,000	50,000	
William Carey College	Hattiesburg, Miss.	SC	JHJ & MGJ Scholarships		1,500	1,500	
Young Audiences Inc. of Houston	Houston, Texas	EO	Maintenance funds		$ 3,500	$ 3,500	
Young Men's Christian Association	Houston, Texas	EB	Toward expansion of Houston Downtown YMCA		600,000	300,000	$ 300,000
The Zoological Society of Houston	Houston, Texas	EB	Toward construction of facilities		100,000	100,000	
				$14,733,000	$20,451,536	$18,763,536	$16,421,000

CONSTITUTIONAL DEFECTS IN SECTION 4943

I. INTRODUCTION

Houston Endowment Inc. (hereinafter, "Endowment"), a private foundation established in 1937, is a tax-exempt organization pursuant to § 501(a) and § 501(c)(3) of the Internal Revenue Code of 1954, as amended (hereinafter, "Code"). Since January 1, 1964, the Endowment has owned 100 percent of the voting stock of the Houston Chronicle Publishing Company (hereinafter, "Houston Chronicle"), a corporation formed under the laws of the State of Texas. The Houston Chronicle publishes the Houston Chronicle, one of two daily newspapers in Houston, Texas.

Section 4943(a)(1) of the Code levies on a private foundation a tax equivalent to five percent of the value of the excess business holdings of the foundation in a business enterprise. A tax equal to 200 percent of such holdings is imposed upon a private foundation which continues to hold excess business holdings at the close of the correction periods provided by the statute. § 4943(b).

According to § 4943 and the Regulations promulgated thereunder by the Secretary of the Treasury, the Endowment may retain ownership of all of the voting stock of the Houston Chronicle until May 25, 1989 without incurring the 200 percent penalty tax. On or before the end of this first phase, the

Endowment must dispose of at least 50% of the voting stock of the Houston Chronicle in order to avoid imposition of the tax. The Endowment may continue to own a maximum of 50% of the voting stock of the Houston Chronicle until May 25, 2004. On or before that date, the Endowment must dispose of an additional 15 percent of the voting stock of the Houston Chronicle in order to reduce its holdings to the 35 percent maximum permitted by § 4943 without payment of penalty. Thereafter, the Endowment could continue to own 35 percent of the voting stock of the Houston Chronicle without further reduction unless disqualified persons acquire more than two percent of the voting stock of the Houston Chronicle.*

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* A "disqualified person" is defined by § 4946 as a person who is (1) a substantial contributor to the foundation; (2) a foundation manager; (3) an owner of more than 20 percent of the total combined voting power of a corporation, the profits interest of a partnership, or the beneficial interest of a trust or unincorporated enterprise, which is a substantial contributor to the foundation; (4) a member of the family of any individual described in (1) through (3) above; (5) a corporation in which persons described in (1) through (4) above own more than 35 percent of the total combined voting power; (6) a partnership in which persons described in (1) through (4) above own more than 35 percent of the profits interest; (7) a trust or estate in which persons described in (1) through (4) above hold more than thirty-five percent of the beneficial interest; or (8) a private foundation which is effectively controlled by the same person or persons who control the private foundation in question or substantially all of the contributions to which were made by the same person or persons described in (1) through (3) or members of their families who made substantially all of the contributions to the private foundation in question.

This memorandum analyzes the validity of the application of the 200 percent penalty tax of § 4943 to the Endowment under the First Amendment and the equal protection component of the due process clause of the Fifth Amendment to the United States Constitution, U.S. Const. amends. I and V.

II. BACKGROUND

A. Scope of the Term "Business Enterprise"

An analysis of these constitutional questions must proceed from an examination of the scope of § 4943 and the context in which it operates. As previously noted, § 4943 imposes a penalty tax on the "excess business holdings" of any private foundation in a business enterprise. § 4943(a) and (b). The "excess business holdings" of a private foundation include the foundation's holdings in any "business enterprise" which the foundation must transfer to a person other than a disqualified person in order for the retained holdings of the foundation to be permitted holdings under § 4943. § 4943(c).

A "business enterprise" does not include a "functionally related business" as defined in § 4942(j)(4), pursuant to § 4943(d)(3). Section 4942(j)(4) defines a "functionally related business" as a trade or business which is not an unrelated trade or business as defined in § 513, or as an activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related "aside from the need of the organization for income or funds or the use it makes of the profits derived" to the exempt purposes of the organization. These functionally related activities are not subject to the § 4943 penalty tax.

Under § 513, an "unrelated trade or business" means "any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 . . . ." Excluded from this definition is any trade or business in which substantially all the work is performed for the organization without compensation, or, in the case of organizations described in § 501(c)(3) or in the case of a college or university, any trade or business which is carried on by the organization primarily for the convenience of its members, students, patients, officers, or employees. Also excluded from the definition is any trade or business which consists of the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions. § 513(a).

Section 4943(d)(3)(B) also provides that the term "business enterprise" does not include a trade or business at least ninety-five percent of the gross income of which is derived from passive sources. Gross income from passive sources includes items described by § 512(b'(1) (relating to dividends, interest and annuities), § 512(b)(2) (relating to royalties), § 512(b)(3) (relating to rent) and § 512(b)(5) (relating to gains or losses from the disposition of certain property, which refers to property other than stock and trade or property of a kind which would properly be includable in inventory or property held primarily for sale to customers in the ordinary course of the trade or business). Treas. Reg. § 53.4943-10(c)(2).

For purposes of § 4943, Treas. Reg. § 53.4943-10(a)(1) defines the term "business enterprise" as

> the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services and which constitutes an unrelated trade or business under section 513. For purposes of the preceding sentence, where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from the classification of a business enterprise merely because it does not result in a profit.

Thus the presence of some profit or income motive is a prerequisite to classification as a "business enterprise" within the meaning of § 4943.

B. Scope of the Term "Private Foundation"

The § 4943 penalty tax applies to "private foundations." Section 509 defines the term "private foundation" to mean a domestic or foreign organization described in § 501(c)(3), with certain exclusions. Section 501(c)(3), in conjunction with § 501(a), provides an exemption from income taxation for the following organizations:

> Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, . . ., and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Thus, the term "private foundation" is used generically in § 509(a) and in § 4943 to include generally organizations that are exempt from taxation under § 501(c)(3).

Excluded from the definition of "private foundation" by § 509(a) are organizations described in § 170(b)(1)(A). This latter provision refers to the following groups:

> (1) a church or a convention or association of churches;
>
> (2) an educational association which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of people or students in attendance at the place where its educational activities are regularly carried on;
>
> (3) an organization the principal purpose or functions of which are the provision of medical or hospital care or medical education or medical research;
>
> (4) an organization which normally receives a substantial part of its support from the United States or any state or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to conceive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university, and which is an agency or instrumentality of a state or political subdivision of a state or which is owned or operated by a state or a political subdivision of a state;
>
> (5) a state, possession of the United States, or any political subdivision of a state or the United States, or the United States or the District of Columbia; and
>
> (6) any § 501(c)(3) organization which normally receives a substantial part of its support from a state, the United States, a possession of the United States, or any political subdivision of any of these, or from direct or indirect contributions from the general public.

These listed groups are thereby exempted from the operation of § 4943.

Also excluded from the § 509(a) definition of "private foundation" is an organization which

> (1) normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees, and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business in any taxable year, to the extent such receipts exceed the greater of $5,000 or one percent of the organization's support in such taxable year, from persons other than disqualified persons, from governmental units of a state or the United States, or from the other organizations described in § 170(b)(1)(A) listed above; and which normally receives not more than one-third of its support in each taxable year from the sum of gross investment income and the excess of the amount of unrelated business taxable income as defined in § 512 over the amount of the tax imposed by § 511 on unrelated business income of the organization; § 509(a)(2);
>
> (2) an organization which is organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations excluded from § 509(a) under the forgoing rules; is operated, supervised or controlled by or in connection with one or more such organizations and is not controlled directly or indirectly by one or more disqualified persons; § 509(a)(3); or
>
> (3) is organized and operated exclusively for testing for public safety. § 509(a)(4).

Accordingly, § 4943 does not apply to these organizations which § 509(a) excludes from the definition of "private foundation."

C. Duration of Private Foundation Status.

Pursuant to § 509(b), any organization that is a private foundation within the meaning of § 509(a) on October 9, 1969, or becomes a private foundation on any later date, is to be treated as a private foundation for all periods unless its status as such is terminated under § 507. A private foundation may terminate its status as a private foundation under § 507 only if notice is filed with the Secretary of the Treasury of the intent to accomplish such termination and then only upon payment of a tax equal to the lower of the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefits resulting in the past from the § 501(c)(3) status of the foundation, or the value of the net assets of the foundation.

D. Taxes Presently Imposed on Private Foundations.

Private foundations currently face the following taxes under §§ 511-514, 4940, 4941, 4942, 4944 and 4945 of the Code, in addition to the § 4943 penalty tax.

Under § 511, an organization exempt from taxation under § 501(c) faces a tax each taxable year on the organization's unrelated business taxable income. This unrelated business taxable income consists of the gross income derived by the organization from an unrelated trade or business regularly carried on by the foundation, as defined in § 513. § 512.

Private foundations also bear certain special taxes not imposed upon other organizations. Section 4940(a) and (b) impose a tax on the net investment income of both tax-exempt foundations and taxable foundations for the taxable year. Section 4941 places a tax on each act of self-dealing between a disqualified person and a private foundation. A tax is imposed by § 4942 on the undistributed income of a private foundation for any taxable year equal to 15 percent of the amount of such income remaining undistributed at the beginning of the succeeding taxable year. Section 4944 places a tax on investments by a private foundation which jeopardize the carrying out of any of its exempt purposes. Lastly, section 4945 imposes a tax on each "taxable expenditure" by a private foundation. A "taxable expenditure" is any amount paid or incurred by a private foundation to carry on propaganda or otherwise to attempt to influence legislation, to attempt to influence the outcome of any specific public election or to carry on any voter registration drive, as a grant to an individual for travel, study or other similar purposes, as a grant to organizations other than those excluded from the definition of "private foundation" under § 509(a), or for any purpose other than religious, charitable, scientific, literary or educational purposes. § 4945(d).

III. DISTINCTIONS DRAWN BY § 4943

By virtue of the definitions and exclusions outlined above, the penalty tax of § 4943 applies to private foundations, i.e. those organizations described generally in § 501(c)(3), operating a functionally unrelated business enterprise for profit. Section 4943 does not apply to any of the following groups:

> (1) private foundations operating a functionally related business for profit;
>
> (2) private foundations operating an unrelated trade or business without any profit or income motive;
>
> (3) private foundations operating a trade or business at least 95 percent of the gross income of which is derived from passive sources;
>
> (4) trades or businesses conducted by organizations excluded from the definition of "private foundation" by § 509(a) and § 170(b)(1)(A);
>
> (5) trades or businesses conducted by organizations excluded from the definition of "private foundation" by § 509(a)(2), (3), and (4).

Also free of the penalty tax of § 4943 are the following organizations, exempted from taxation pursuant to § 501(a) and 501(c), conducting any business enterprise:

> (1) corporations organized under an Act of Congress that are instrumentalities of the United States;
>
> (2) civic leagues or organizations not organized

for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;

(3) labor, agricultural, or horticultural organizations;

(4) business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(5) clubs organized for pleasure, recreation, and other non-profitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder;

(6) fraternal beneficiary societies, orders or associations;

(7) voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, where no part of the net earnings of such association inures to the benefit of any private shareholder or individual;

(8) benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations, 85 percent or more of the income of which consists of amounts collected from members for the sole purpose of meeting losses and expenses;

(9) cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit, and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose, and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(10) mutual insurance companies or associations other than life or marine which do not receive gross investment income and premiums exceeding $150,000.00 during the taxable year;

(11) corporations organized by farmers' cooperatives for the purpose of financing the ordinary crop operations of its members or other producers and operated in conjunction with the farmers' cooperative;

(12) a trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits;

(13) a post or organization of past or present members of the armed forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(14) trust or trusts created before June 25, 1959 forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees;

(15) any association organized before 1880 more than 75 percent of the members of which are present or past members of the armed forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

Lastly, the penalty tax of § 4943 does not apply to taxable entities conducting any trade or business.

IV. FIRST AMENDMENT ANALYSIS.

A. Section 4943 Impinges Upon First Amendment Freedoms of the Endowment.

1. Facial Invalidity v. Invalidity As Applied.

A statute or any governmental action may be subject to constitutional challenge on its face, if by its very terms it regulates or restricts the freedom of speech or the freedom of the press guaranteed by the First Amendment. Additionally, a legislative enactment or other governmental action may improperly impinge upon interests protected by the First Amendment in its application to certain persons or groups, and thereby face constitutional scrutiny. See *Ulster County Court v. Allen*, 442 U.S. 140, 155-57, 60 L.Ed.2d 777, 790-91 (1979).

Section 4943 suffers no facial invalidity in this usual sense, for its express terms do not affect an interest safeguarded by the First Amendment. As applied to the Endowment, however, § 4943 restricts, and for all practical purposes eliminates, the Endowment's First Amendment right to own and operate a newspaper. The statute imposes a penalty tax on the Endowment because of its ownership and operation of a newspaper with a profit motive. The severity of the tax dictates that the Endowment must divest itself of the required portions of its ownership of the Houston Chronicle. The statute will prohibit the Endowment from owning more than 35% of the voting stock of the Houston Chronicle or more than 35% of the beneficial interest of any unincorporated newspaper. This impact of § 4943 on the Endowment effectively denies it the unfettered exercise of a basic First Amendment right to freedom of speech and freedom of the press, and thus must face the exacting scrutiny demanded of such restrictions.

2. The First Amendment Protects the Right to Own, Operate and Publish a Newspaper.

The First Amendment freedom of speech and freedom of the press shield those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." Grosjean v. American Press Company, Inc., 297 U.S. 233, 245, 80 L.Ed. 660, 666 (1936), quoting from Hebert v. Louisiana, 272 U.S. 312, 316, 71 L.Ed. 270, 272 (1926). The freedom to publish lies at the core of these First Amendment guarantees. The operation and publication of a newspaper represent the archetypal exercise of First Amendment freedoms. Associated Press v. United States, 326 U.S. 1, 20-21, 89 L.Ed. 2013, 2030 (1945); Grosjean v. American Press Company, Inc., supra. Members of the press have a "special and constitutionally recognized role . . . in informing and educating the public, offering criticism, and providing a forum for discussion and debate." First National Bank of Boston v. Bellotti, 435 U.S. 765, 781, 55 L.Ed.2d 707, 721 (1978). See also Saxbe v. Washington Post Company, 417 U.S. 843, 41 L.Ed.2d 514 (1974); Mills v. Alabama. 384 U.S. 214, 16 L.Ed.2d 484 (1966).

The protection afforded free speech and free press by the First Amendment encompasses the entire panoply of attendant activities and practices necessary to give full effect to the essential First Amendment freedoms. As the Supreme Court noted in Martin v. City of Struthers, 319 U.S. 141, 143, 87 L.Ed. 1313, 1316-17 (1942):

> The right of freedom of speech and press has broad scope. The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance. This freedom embraces the right to distribute literature . . . and necessarily protects the right to receive it.

Thus, the freedom to distribute and disseminate published material and other information is protected by the First Amendment. The "[l]iberty of circulating is as essential to that freedom as liberty of publishing; indeed without the circulation, the publication would be of little value." Lovell v. City of Griffin, 303 U.S. 444, 452, 82 L.Ed. 949, 954 (1938). See also Talley v. California, 362 U.S. 60, 64, 4 L.Ed. 2d 559, 563

(1960). The Court in Griswold v. Connecticut, 381 U.S. 479, 482, 14 L.Ed.2d 510, 514 (1965), gave the First Amendment a very broad reading indeed:

> [T]he State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read . . . and freedom of inquiry, freedom of thought, and freedom to teach . . ..

These rights embodied in the First Amendment guarantees of free speech and press mandate that protection be extended to the right to own or conduct the means of distributing or disseminating expression. Otherwise, a state could effectively hamper or abolish the liberties of publication and circulation by regulating the means of their exercise. Such rights in the abstract would be of little value if no protection were given to the modes through which they are implemented. Accordingly, the courts have recognized that the First Amendment encompasses the freedom to own and operate a bookstore, Smith v. California, 361 U.S. 147, 4 L.Ed.2d 205 (1959), Genusa v. City of Peoria, 619 F.2d 1203 (7th Cir. 1980), as well as the right to own and operate a movie theater, Chulchian v. City of Indianapolis, 633 F.2d 27 (7th Cir. 1980). The Endowment, then, has a First Amendment right to own and operate the Houston Chronicle as a means of exercising its fundamental First Amendment rights of free speech and press. A contrary rule would make the Endowment's freedoms of speech and press mere abstract propositions. These freedoms would be rendered meaningless if the modes of their exercise were not sheltered within the bulwark of the First Amendment.

It might be argued that § 4943 does not completely deny the Endowment the right to participate in the ownership and operation of a newspaper, for it will allow the Endowment to retain a 35 percent interest in the outstanding stock of the Houston Chronicle. Accordingly, the argument would continue, the Endowment is not entirely divested of its First Amendment freedoms since its ownership of the Houston Chronicle is not eliminated entirely. This argument is not persuasive. Effective exercise of the First Amendment rights to own the means of expression and to operate an outlet for dissemination of information and opinions to the public necessarily entails the right to organize those means of expression as the speaker sees fit, and in the manner it deems most efficacious to implement its First Amendment freedoms. Effective use of a means of expression necessitates the opportunity to speak to the public through that vehicle, particularly when it takes the form of a newspaper. Ownership of 35 percent of the voting stock of the Houston Chronicle would effectively deny the Endowment the capability to use the voice of the Houston Chronicle, and, in all practical terms, destroy the viability of that newspaper as a mode of exercise of the Endowment's First Amendment freedoms of speech and press.

3. The Status of the Endowment as a Private Foundation Does Not Diminish Its Right to First Amendment Protection.

The Endowment's claim to First Amendment protection is not diluted by its status as a private foundation, rather than as a natural person. The Supreme Court faced this issue directly in First National Bank of Boston v. Bellotti, supra. There, the Court examined the constitutionality of a Massachusetts statute which prohibited corporations from making contributions or expenditures for the purpose of influencing the vote on referendum proposals other than those "materially affecting any of the property, business or assets of the corporation." The state claimed that the First Amendment rights of a corporation were not coextensive with those of a natural person. Rejecting this position, the Court ruled that the proper question was not whether corporations have First Amendment rights equivalent to those of natural persons, but whether the statute "abridges expression that the First Amendment was meant to protect." 435 U.S. at 776, 55 L.Ed.2d at 717. The Court concluded that the "inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual." 435 U.S. at 777, 55 L.Ed.2d at 718. See also Consolidated Edison v. Public Service Commission, 447 U.S. 530, 65 L.Ed.2d 319 (1980). Thus, § 4943 can not be defended on the ground that the Endowment, because of its organizational status as a corporation, or its status under the Code as a private foundation, has no claim to First Amendment freedom.

4. The Endowment's Operation of the Houston Chronicle as a Commercial Enterprise Does Not Diminish Its Right to First Amendment Protection.

Nor can it be argued that the fact that Endowment seeks to own and operate the Houston Chronicle as a profitable business undermines its right to First Amendment protection. Free publication and dissemination of all forms of the printed word represent stereotypical applications of the First Amendment freedoms of speech and press. "It is of course no matter," the Supreme Court has held, "that the dissemination takes place under commercial auspices." Smith v. California, supra, 361 U.S. at 150, 4 L.Ed.2d at 209. The First Amendment protection of the publication and distribution of newspapers does not evaporate merely because the written materials are sold rather than distributed free of charge. Heffron v. International Society for

Krishna Consciousness, Inc., 452 U.S. 640, 647, 69 L.Ed.2d 298, 306 (1981); Murdock v. Pennsylvania, 319 U.S. 105, 111, 87 L.Ed. 1292, 1297 (1943); Wulp v. Cocoran, 454 F.2d 826, 834-35 n.13 (1st Cir. 1972). Moreover, the fact that a publication carries advertisements or that it is for profit does not render its speech the sort of "commercial speech" over which the legislature has a somewhat broader power of regulation. New York Times Co. v. Sullivan, 376 U.S. 254, 11 L.Ed.2d 686 (1964); Ad World, Inc. v. Township of Doylestown, 672 F.2d 1136 (3rd Cir.), cert. denied 72 L.Ed.2d 850 (1982). Thus, the presence of a profit motive in the operation of the Houston Chronicle is irrelevant to the determination of the scope of its First Amendment protection. As the Court in Pittsburgh Press Company v. Pittsburgh Commission on Human Relations, 413 U.S. 376, 385, 37 L.Ed.2d 669, 676 (1973), noted:

> If a newspaper's profit motive were determinative, all aspects of its operations - from the selection of news stories to the choice of editorial position - would be subject to regulation if it could be established that they were conducted with a view toward increased sales. Such a basis for regulation clearly would be incompatible with the First Amendment.

See also Friedman v. Rogers, 440 U.S. 1, 12 n.11, 59 L.Ed.2d 100, 111 n.11 (1979).

B. First Amendment Analysis - In General.

1. Policy.

Any governmental abridgment of the First Amendment rights of free speech and press must withstand a demanding judicial scrutiny. "[R]egulation of First Amendment rights is always subject to exacting judicial review." Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 70 L.Ed.2d. 492, 497 (1981). The Supreme Court has on many occasions emphasized the importance of these rights to our system of self-rule. These "freedoms of speech and of the press rank among our most cherished liberties." Pittsburgh Press Company v. Pittsburgh Commission on Human Relations, supra, 413 U.S. at 381, 37 L.Ed.2d at 675. The Court in Grosjean v. American Press Company, supra, described the policies behind the First Amendment safeguards as follows:

> The predominant purpose of the grant of immunity here invoked was to preserve an untrammeled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot not be regarded otherwise than with grave concern. . . . A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.

297 U.S. at 250, 80 L.Ed. at 668-69. Additionally, the Court in Schneider v. Irvington, 308 U.S. 147, 161, 84 L.Ed. 155, 165 (1939), delineated the judiciary's approach to First Amendment problems in this fashion:

> In every case . . . where legislative abridgment of the rights [of free speech and press] is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activity, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights.

The restriction imposed by § 4943 upon the Endowment's First Amendment right to own and operate the Houston Chronicle must undergo this exacting judicial scrutiny.

2. The Two Tracks of First Amendment Analysis.

The appropriate Fitst Amendment test of the validity of a governmental action restricting the freedoms of speech and press depends upon whether that action is content-sensitive or content-neutral. A legislative enactment is content-sensitive if on its face it is directed at restricting or regulating a particular message or expression or is motivated by a desire to restrict a particular view. Governmental action aimed at ideas or information by selecting certain speech or expression for governmental control or penalty because of the specific viewpoint expressed, or because of the effects produced by awareness of the information such expression imparts, is included within this classification. This form of abridgment arises from governmental actions directed at the communicative impact of the expression or other exercise of First Amendment rights.

Governmental regulation is content-neutral where it constricts the flow of information and ideas or hampers the exercise of First Amendment freedoms while pursuing other goals, either by limiting an activity through which information and ideas might be conveyed, or by forcing compliance with rules which might discourage the communication of ideas or information. These legislative steps may be summarized as those aimed at the noncommunicative impact of the expression or other exercise of First Amendment freedoms, rather than at the message or communicative impact of the expression. See Buckley v. Valeo, supra; National Black United Fund, Inc. v. Devine, 667 F.2d 173 (D.C. Cir. 1981); Ely, Democracy and Distrust 109-113 (1980) ("Ely"); Tribe, American Constitutional Law 580 (1978) ("Tribe").

The analysis of content-sensitive regulation is essentially one of categorization. Regulation of this sort is unconstitutional unless the government can show that the speech or expression restricted is within an unprotected category of speech, e.g., the incitement of imminent lawless action, Brandenburg v. Ohio, 395 U.S. 444, 23 L.Ed.2d 430 (1969) (per curiam), Cantwell v. Connecticut, 310 U.S. 296, 84 L.Ed. 1213 (1940); fighting words tending to incite immediate breach of the peace, Feiner v. New York, 340 U.S. 315, 95 L.Ed. 295 (1951), Chaplinsky v. New Hampshire, 315 U.S. 568, 86 L.Ed. 1031 (1942); offensive words affronting to a captive unwilling audience, children, or an especially sensitive audience, Federal Communications Commission v. Pacifica Foundation, 438 U.S. 726, 57 L.Ed.2d 1073 (1978); obscene expression, Flynt v. Ohio, 451 U.S. 619, 68 L.Ed.2d 489 (1981); defamatory speech, Wolston v. Readers Digest Association, 443 U.S. 157, 61 L.Ed.2d 450 (1979), Herbert v. Lando, 441 U.S. 153, 60 L.Ed.2d 115 (1979), Gertz v. Robert Welch, Inc., 418 U.S. 323, 41 L.Ed.2d 789 (1974); or commercial speech, consisting of advertisements, and particularly deceptive advertising, Metromedia, Inc. v. San Diego, 453 U.S. 490, 69 L.Ed.2d 800 (1981), Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 48 L.Ed.2d 346 (1976), Pittsburgh Press Company v. Pittsburgh Commission on Human Relations, supra. If the speech affected does fall within one of these unprotected categories, the validity of the governmental action depends upon the legitimacy of the government's interest at stake and whether or not the speech is likely to produce the unprotected result. See Ely, supra; Tribe, supra, at 581-584.

If a governmental regulation or statute is content-neutral, the second track of First Amendment analysis governs. The regulation will be invalidated unless the government is able to show that:

> (1) it is within the constitutional power of the government;
>
> (2) it furthers an important or substantial governmental interest;
>
> (3) that governmental interest is unrelated to the suppression of free expression; and
>
> (4) the incidental restriction on First Amendment freedoms is no greater than essential to the furtherance of that interest.

United States v. O'Brien, 391 U.S. 367, 377, 20 L.Ed.2d 672, 680 (1968). See Grand Faloon Tavern, Inc. v. Wicker, 670 F.2d 943 11th Cir.), cert. denied, 74 L.Ed.2d 113 (1982); Hart Book Stores, Inc. vs. Edmisten, 612 F.2d 821 (4th Cir. 1979), cert. denied, 447 U.S. 929, 65 L.Ed.2d 1124 (1980). In O'Brien, the Court rejected a First Amendment challenge to a conviction under a federal statute prohibiting destruction or mutilation of a Selective Service registration certificate. The Court concluded that the legislation, designed to preserve the continuing availability of the draft cards, served a legitimate and substantial purpose in Congress' efforts to administer a system of registration for individuals liable for military training and service. See Ely, supra; Tribe, supra. It is under this test, for example, that the Court has upheld reasonable time, place and manner restrictions on First Amendment activities that are not based upon either the content or the subject matter of speech. Heffron v. International Society for Krishna Consciousness, Inc., supra; Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., supra; Consolidated Edison Company v. Public Service Commission, supra; Cox v. Louisiana, 379 U.S. 536, 13 L.Ed.2d 471 (1965).

3. Section 4943 is Content-Neutral.

On its face, § 4943 is not directed at ideas or information, either because of the viewpoint expressed by First Amendment activities or because of the communicative impact of the information imparted by such activities. Nor does it appear that the congressional goals in enacting § 4943 included the restriction or elimination of any specific message or communicative impact produced by any particular First Amendment expression.

The Introductory Statement of the 1965 United States Treasury Department Report on Private Foundations, pages 30-45, identified the following "undesirable results" flowing from operation of commercial ventures by private foundations, at which the various provisions of the Tax Reform Act of 1969 relating to private foundations were directed:

> (1) taxable businesses are placed at a "serious competitive disadvantage" which is not necessarily corrected by the tax on the unrelated business income of private foundations imposed by §§ 511, 512 and 513. "All of these foundations," said the Report, "compete with similar businesses owned by non-exempt taxpayers who must pay for their acquisitions, finance their operations, and support their expansion programs with the funds which remain after taxes have been paid;"
>
> (2) because contributions to private foundations are deductible by donors for federal income tax purposes, foundation businesses are capitalized with tax-free dollars, rather than after-tax dollars, giving them an advantage over businesses owned by taxable entities; the tax immunity of dividends, interest, and other proceeds from passive sources enables foundations to supply capital to their business endeavors with exempt income; since neither of these benefits is available to commercial enterprises owned by taxable entities, foundations are better able to subsidize their businesses during periods of difficulty and expand them during periods of growth;
>
> (3) private foundation businesses have no stockholders to demand current distributions of earnings, allowing them to accumulate profits and reinvest them in modernization or expansion, making them "formidable and successful competitors."
>
> (4) foundation involvement in business provides the opportunity for subtle and varied forms of self-dealing, e.g., employment of relatives and friends in the business and accommodation of business acquaintances many of which, said the

> Report, escape the practical impact of direct limitations on self-dealing;
>
> (5) the willingness of private foundations to forgo distribution of current profits from their businesses delays the progress of funds to charity; this was not corrected by then existing restrictions on accumulations of income;
>
> (6) private foundation participation in business activities lessens individual experimentation and the exercise of creative imagination which are needed by charitable organizations whose primary concerns are social; directors of a foundation heavily involved in business will have less time and incentive to attend to the charitable aims of their foundations;
>
> (7) these results of foundation involvement in business are often aggravated by the use of private foundations as vehicles to maintain control of a private corporation within a family, allowing donors to obtain income tax deductions for their contributions, reduce future estate taxes and establish a tax-free transfer of control of a business to younger members of their family.

These goals were reflected in the committee reports of the House Ways and Means Committee and the Senate Finance Committee on the Tax Reform Act of 1969, H.R. 13270, which enacted § 4943. H.R. Rep. No. 413, 91st Cong., 1st Sess. 27 (1969), 1969 U.S. Code Cong. & Ad. News 1671; S. Rep. No. 552, 91st Cong., 1st Sess. 38 (1969), 1969 U.S. Code Cong. & Ad. News 2066-67.

Of course, several of these policies provided the impetus for other provisions of the Tax Reform Act of 1969, including the tax on a private foundation's net investment income imposed by §

4940, the prohibitions on self-dealing in § 4941, the taxes upon accumulated income of a private foundation in § 4942, taxes on investments which jeopardize charitable purposes imposed by § 4944 and the taxes on taxable expenditures by private foundations found in § 4945. The principal objectives of § 4943 itself stemmed from the perceived competitive advantages enjoyed by businesses owned by private foundations over enterprises owned by taxable entities in the form of avoidance of the tax on unrelated business income, capitalization through tax-free contributions and income from passive sources and the lack of stockholders to demand current distributions of earnings; the diversion of the attention of the foundation's managers from charitable duties to the maintenance and the improvement of the business; and the social welfare distributive concern for the use of private foundations to maintain control of family businesses, where the contributors of the property to the foundation maintain control over the foundation and usually retain personal interests in the business itself. In these latter situations, the Treasury Department was concerned chiefly with the large charitable contribution deductions received by these donors and the tax-free transfer of the control of the business to succeeding generations by virtue of transfer of the foundation's ownership in the business.

The House Report, in describing the objectives of § 4943, specifically mentioned the use of foundations to retain control of businesses, diversion of attention from charitable purposes, and "unfair" competition by foundation-held businesses with those owned by taxable organizations. 1969 U.S. Code Cong. & Ad. News 1672. The Senate Report addressed the same goals. 1969 U.S. Code Cong. & Ad. News 1066-67.

None of these goals behind § 4943 involve the regulation of First Amendment activity because of its particular message or the communicative impact of the communication it conveyed. Accordingly, the validity of § 4943 under the First Amendment should be determined pursuant to the O'Brien content-neutral analysis.

C. The Four-Part O'Brien Analysis.

1. Is § 4943 Within the Constitutional Power of Congress?

Congress and state legislatures have broad taxing powers. Where taxing legislation affects only economic interests, Congress may levy fees and taxes with little constitutional restraint. In such cases the taking clause of the Fifth Amendment normally provides the only grounds for constitutional challenge, even where taxes render a business unprofitable. City of Pittsburgh v. Alco Parking Corporation, 417 U.S. 369, 41 L.Ed.2d 132 (1974); Bayside Enterprises, Inc. v. Carson, 450 F. Supp. 696 (M.D. Fla. 1978). When a governmental authority, however, imposes fees or taxes which implicate rights deemed to be fundamental, such as the First Amendment rights of free speech and press, a much stricter judicial scrutiny is required. Lubin v. Panish, 415 U.S. 709, 39 L.Ed.2d 702 (1974); Bayside Enterprises, Inc. v. Carson, supra.

This is not to say that newspapers, and other means of exercise of First Amendment freedoms, are exempt from economic regulation in general, or from taxation in particular. "The publisher of a newspaper has no special immunity from the application of general laws." Associated Press v. National Labor Relations Board, 301 U.S. 103, 132-33, 81 L.Ed. 953, 961 (1937). The "States and the Federal Government can subject newspapers to generally applicable economic regulations without creating constitutional problems." Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue, _____ U.S. _____, 51 U.S.L.W. 4315, 4317 (March 29, 1983). The Supreme Court has upheld application to the press of the National Labor Relations Act, Associated Press v. National Labor Relations Board, supra, and the Fair Labor Standards Act, Mabee v. White Plains Publishing Company, 327 U.S. 178, 90 L.Ed. 607 (1946), Oklahoma Press Publishing Company v. Walling, 327 U.S. 186, 90 L.Ed. 614

(1946). The Court has authorized application of the Sherman Antitrust Act to newspapers. Associated Press v. United States, supra. See also Pittsburgh Press Company v. Human Relations Commission, supra; Branzburg v. Hayes, 408 U.S. 665, 33 L.Ed.2d 626 (1972). Newspapers also must comply with ordinary, equitable and non-discriminatory taxes on their business. Grosjean v. American Press Company, supra.

One should avoid, however, the quantum leap from the proposition that newspapers are not immune from taxation or other forms of economic regulation to the facile conclusion that any tax statute implicating newspapers is presumptively valid. The Supreme Court has emphasized the "narrowness of the recognized exceptions to the principle that the press may not be regulated by the Government." Pittsburgh Press Company v. Human Relations Commission, supra, 413 U.S. at 382, 37 L.Ed.2d at 675. A tax statute must face the same First Amendment scrutiny as any other legislative enactment and here, where such a statute is directed at the noncommunicative impact of First Amendment activities, must pass muster under the O'Brien analysis. At this point in that evaluation, it can merely be concluded that § 4943 does lie within the general taxing power of Congress.

2. Does § 4943 Further an Important or Substantial Governmental Interest?

Several cases illustrate the types of interests deemed important or substantial by the courts. The Supreme Court, in First National Bank of Boston v. Bellotti, supra, while analyzing the validity of a state statute prohibiting expenditures by banks and certain business corporations for the purpose of influencing the vote on referendum proposals, observed that preserving the integrity of the electoral process, preventing corruption, and sustaining the active and alert responsibility of the individual citizen in a democracy are interests "of the highest importance." 435 U.S. at 788-89, 55 L.Ed.2d at 725. The Court also found important the preservation of the individual citizen's confidence in government and the protection of corporate shareholders. The protection of the safety and convenience of persons using a public forum is an important governmental objective, along with the interest in avoiding congestion and maintaining orderly movement in such public fora. Heffron v. International Society for Krishna Consciousness, Inc., supra; Police Department v. Mosley, 408 U.S. 92, 33 L.Ed.2d 212 (1972). The plaintiff in Hart Book Stores, Inc. v. Edmisten, supra, challenged a North Carolina statute providing that a single building containing an adult bookstore, adult theater, adult mini-theater, massage parlor, or sexual device wares could not contain a second such "adult establishment." The court found no First Amendment defect in the statute, and in so doing noted that the state had a substantial interest in maintaining a stable, healthful environment in its cities. In upholding over a First Amendment attack a municipal ordinance prohibiting nude and semi-nude entertainment in establishments where alcoholic beverages were sold, the court in Grand Faloon Tavern, Inc. v. Wicker, supra, found that the locality's interest in reducing the incidents of violations of law and the number of police calls at such establishments were legitimate and substantial. The court in Chulchian v. City of Indianapolis, supra, in sustaining an ordinance which denied a license to operate a movie theater to an applicant who permitted any sort of illegal conduct or practices to take place on the premises, found weight in the locality's interest in encouraging business responsibility and protecting patrons who frequent the premises.

It must be conceded that preserving the integrity of the government's taxation system, elimination of methods used to circumvent payment of taxes and the prevention of self-dealing by taxpayers are important or substantial governmental interests. Protecting the charitable purposes of private foundations is also an important interest. On the other hand, concern for the maintenance of control over family businesses does not seem as substantial as the interests observed by the courts on the occasions noted above. Efforts to prevent the ownership of a newspaper by a private foundation in order to enhance the competitive vitality of newspapers owned by other entities should not be seen as particularly compelling interest, especially in light of the suspect nature of this goal, as described below.

Of course, the absolute prohibition of ownership of business ventures by private foundations will serve the goals outlined by Congress in its enactment of § 4943. This method chosen by Congress to further these goals presents a certain degree of constitutional suspicion, however. In First National Bank of Boston v. Bellotti, supra, the Court struck down on First Amendment grounds a state statute forbidding expenditures by banks and certain business corporations for the purpose of influencing the vote on referendum proposals, other than those which materially affected the corporation's property or assets. The Court, concluding that the protection of corporate shareholders was a legitimate goal, found that the state's purpose of preventing the use of corporate resources in furtherance of views with which some shareholders may disagree was belied by the underinclusive and overinclusive nature of the statute. The failure of the statute to regulate corporate expenditures regarding the passage or defeat of legislation or on public issues before they became the subject of a referendum, and the exclusion from the statute of other entities or organized groups in which persons hold interests or memberships revealed the underinclusive nature of the statute. Its overinclusiveness was demonstrated by the fact that the statute would prohibit a corporation from supporting or opposing a referendum proposal even if its shareholders authorized the contribution or expenditures. Also, minority shareholders could resort to derivative suits to challenge corporate disbursements alleged to have been made for improper corporate purposes. A similar approach was taken by the Court in Citizens Against Rent Control v. Berkeley, supra. There, the Court invalidated on First Amendment grounds a local ordinance which limited to $250 contributions to committees formed to support or oppose ballot measures. The city attempted to justify the measure as one necessary to force disclosure of identity of supporters and opponents of ballot measures, rather than allowing them to speak through committees. The Court refused to allow the ordinance to stand on that justification, because of its overinclusive nature. Another section of the ordinance, not at issue in the case, required publication of the list of contributors in advance of the voting, thereby removing the necessity for a limitation on contributions to committees to force disclosure.

By the same token, the absolute prohibition of § 4943 is both underinclusive and overinclusive. The failure to include tax-exempt organizations other than private foundations conducting business ventures within the scope of § 4943 demonstrates its underinclusive character. Businesses conducted by any tax-exempt organization, not merely those owned by private foundations, present the same prospects for self-dealing, tax-free transfer of control of family businesses and diversion of attention from charitable purposes, and enjoy the competitive advantages perceived by Congress, yet they are not affected by § 4943. The same is true of foundations operating related business enterprises. Foundation businesses operated with no profit motive are not affected by § 4943, even though such concerns would be able to expand and reduce prices with much greater ease than other businesses.

The statute is overinclusive because it denies a private foundation the right to operate a newspaper or other business even though that business may be operated fairly, without incidents of self-dealing, with no diversion of the directors' attention from their charitable duties, and without the use of a private foundation to maintain control of a family business. The statute will also prevent the dedication to charitable uses of businesses or assets contained in a family business or other business which otherwise would not be so dedicated. Since the Houston Chronicle pays ordinary taxes on its income, the broad prohibition of § 4943 is not necessary to prevent such income from escaping taxation. Other sections of the Tax Reform Act provide safeguards against self-dealing and accumulation of income, rendering the absolute prohibition of § 4943 less necessary. These weaknesses in the extent to which § 4943 comports with congressional objectives, under Bellotti and Berkely, are evidence of its constitutional infirmity.

3. Are the Interests Furthered by § 4943 Unrelated to the Suppression of Free Expression?

Prevention of self-dealing between private foundations and business ventures, preservation of the charitable nature and purposes of private foundations, and discouraging tax-free transfers of family businesses from one generation to the next are not related to the suppression of free expression.

The congressional desire to immunize businesses owned by taxable entities from competition from foundation-held concerns warrants closer scrutiny. In Heffron v. International Society for Krishna Consciousness, Inc., supra, the Court upheld a state rule requiring religious organizations to sell literature and solicit donations at assigned locations within the fairgrounds at a state fair. The Court concluded that the restriction was unrelated to the suppression of expression, for it applied evenhandedly to all groups which wished to distribute and sell written materials or to solicit funds. The Court emphasized that such regulation of First Amendment freedoms is valid only if it applies equally to all potential comers, by noting that under the state rule "no person or organization, whether commercial or charitable, is permitted to engage in such activities except from a booth rented for those purposes." 452 U.S. at 649, 69 L.Ed.2d at 307. In contrast, § 4943 singles out private foundations, and particularly the Endowment, for disfavored treatment.

The Court's decision in Buckley v. Valeo, supra, highlights the invalidity of differential treatment of persons or groups in their exercise of First Amendment freedoms. The plaintiffs in Buckley challenged the constitutionality of certain provisions of the Federal Election Campaign Act of 1971, 2 U.S.C. §§ 431 et seq.. On First Amendment grounds, the Court struck down the provisions of the Act which imposed a $1,000 limitation on expenditures each year "relative to a clearly identified candidate" by individuals and groups, placed ceilings on expenditures by candidates for office from their personal or family resources and which limited to certain amounts overall campaign expenditures by candidates seeking nomination for election and election to federal office. An essential element of the constitutional defect in these expenditure limitations lay in the Court's determination that the goals behind the spending limitations were not entirely unrelated to the suppression of expression. The Court noted:

> Even if the categorization of the expenditure of money as conduct were accepted, the limitations challenged here would not meet the O'Brien test because the governmental interests, advanced in support of the Act, involve "supressing communication." The interests served by the Act include restricting the voices of people and interest groups who have money to spend and reducing the overall scope of federal election campaigns. Although the Act does not focus on the ideas expressed by persons or groups subjected to its regulations, it is aimed in part at equalizing the relative ability of all voters to affect electoral outcomes by placing a ceiling on expenditures for political expression by citizens and groups.

424 U.S. at 17, 46 L.Ed.2d at 686-87.

Similarly, the Treasury Report and House and Senate Committee Reports which formed the basis for § 4943 reveal that the interests pursued by Congress were not entirely unrelated to the suppression of free expression, in the same sense in which such expression was adversely affected in Buckley. A chief goal of § 4943 and its prohibition of private foundation involvement in business ventures was that of eliminating perceived competitive advantages enjoyed by such enterprises over those businesses owned and operated by taxable organizations. The discussions of unrelated business income escaping taxation, capitalization through tax deductible contributions and the absence of shareholders in private foundation businesses to demand current distributions of earnings were all designed to illustrate the competitive advantages enjoyed by businesses owned by private foundations. Thus, a primary objective of § 4943 was to enhance the competitive vitality of businesses owned by taxable entities by removing the competitive threat from foundation-held enterprises.

The 1965 Treasury Department Report, in addressing this concern, specifically mentioned two undocumented examples involving newspapers owned by private foundations. The use of these examples reveals that Congress had in mind specific situations involving competition between newspapers owned by private foundations and those owned by other entities. Although Congress did not focus upon the ideas expressed by these groups, it did aim, as it did in the statute invalidated by the Court in Buckley, in part at equalizing the relative ability of newspapers to compete and to survive in the marketplace as a means of exercising the First Amendment freedoms of speech and press by removing from that marketplace newspapers owned and operated by private foundations. As did the government's efforts to equalize the positions of groups involved in public campaign expenditures, § 4943 reflects an effort to restrict the voices of newspapers owned by private foundations in order to enhance the strength of other newspapers. Because these objectives were not completely unrelated to the suppression of expression, this element of the O'Brien test reveals a constitutional defect in § 4943.

Indeed, in its application to the Endowment, § 4943 presents this constitutional defect in its most acute form. The two undocumented examples from the Treasury Report mentioned above, one of which was repeated verbatim in the report of the Senate Finance Committee, 1969 U.S. Code Cong. & Ad. News 2066, were based upon the assets and activities of the Endowment. Both examples were used to illustrate the competitive potential and specific competitive advantages enjoyed by the Houston Chronicle over those newspapers which compete with it. These examples were but veiled references to a particular foundation, the Endowment.

The restriction on expression and the free exercise of First Amendment rights imposed by § 4943 is thus much more aggregious than are governmental efforts to restrict the activities of certain broadly defined groups to equalize their relative abilities to influence the public or to engage in First Amendment activity, as was the case in Buckley. It represents a congressional desire to handicap the First Amendment activity of a particular entity, the Endowment, in order to enhance the strength of a particular competing newspaper and immunize it from the aggressive competition of the Houston Chronicle. These goals are far from unrelated to the suppression of expression. They represent efforts to equalize the First Amendment voices of various groups. Worse still, they represent efforts to enhance the First Amendment activity of one specific entity by eliminating that of another particular entity. Such a legislative goal not unrelated to the suppression of expression is "presumptively unconstitutional." Minneapolis Star & Tribune Company v. Minnesota Commissioner of Renvenue, supra, 51 U.S.L.W. at 4318.

4. Is the Incidental Restriction Imposed by § 4943 on Free Expression No Greater than Essential to Further the Governmental Interests Involved?

This element of the O'Brien analysis emphasizes that the First Amendment will tolerate only that restriction on free expression necessary to achieve the governmental objectives involved. The availability of less restrictive alternatives to serve those interests renders the means chosen by the legislature invalid. On this point, the distinctions drawn by § 4943 are of crucial importance. The penalty tax of § 4943 denies a private foundation a mode of exercise of its First Amendment freedoms of speech and press where such activity constitutes a business enterprise. For the Endowment, the statute would destroy its ownership of the Houston Chronicle and the use of that entity as a means of exercise of its First Amendment freedoms. It also places an absolute bar on the Endowment's ownership of any First Amendment activity, where it would amount to a business enterprise. The Endowment could continue to own and operate the Houston Chronicle if such activity would not constitute a "business enterprise," i.e., if the Houston Chronicle were operated without the production of income and in the absence of a profit motive, thereby removing it from the Code's definition of the active conduct of a trade or business. This option does not remedy the First Amendment defects of § 4943, for, as we have seen, the presence of a profit motive or the commercial nature of First Amendment activity does not dilute its claim to First Amendment protection. The presence or absence of a profit motive is irrelevant to this inquiry.

The extreme degree of the restriction imposed by § 4943 on the First Amendment activity of the Endowment is highlighted by a closer examination of the context in which it operates. Section 4943 will eliminate the Endowment's ownership of the Houston Chronicle. Additionally, the Endowment is prohibited from directly engaging in the bulk of First Amendment activity by the § 4945 taxes on the taxable expenditures of a private foundation and the limitations on First Amendment activity established in § 501(c)(3). The term "taxable expenditure" in § 4945 includes any amount paid or incurred by a private foundation "to carry on propaganda, or otherwise to attempt, to influence legislation . . . .." This includes "any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof . . ." and "any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee may who participate in the formulation of the legislation . . . .." § 4945(d)(1), (e)(1) and (2). A tax equal to ten percent of the amount of such taxable expenditures is imposed on the private foundation by § 4945(a)(1), and a tax equal to 2 1/2% of the amount is exacted from the manager of the foundation agreeing to making the expenditure by § 4945(a)(2). In addition, a tax equal to 100% of the amount of the expenditure is levied on the private foundation for any expenditure not corrected within the taxable period and a tax equal to 50% of the amount of such taxable expenditure is imposed upon a foundation manager who refuses to agree to part or all of the correction. § 4945(b). These severe taxes operate as a practical prohibition on such expenditures by private foundations.

The Endowment is also subject to § 501(c)(3), which denies it the opportunity to "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." These prohibitions strike at the heart of the First Amendment, for they "operate in an area of the most fundamental First Amendment activities." Buckley v. Valeo, supra, 424 U.S. at 14, 46 L.Ed.2d at 685. As the Court also noted in Buckley v. Valeo:

> Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." [Citation omitted].

424 U.S. at 14, 46 L.Ed.2d at 685. The Court echoed these concerns in First National Bank of Boston v. Bellotti, quoting from Thornhill v. Alabama, 310 U.S. 88, 84 L.Ed. 1093 (1940):

> "The freedom of speech and of the press guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. . . . Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."

435 U.S. at 776, 55 L.Ed.2d at 717.

The interaction of § 4943, § 4945 and § 501(c)(3) effectively strips the Endowment of any means by which to engage in these fundamental First Amendment activities. Section 4945 and § 501(c)(3) prevent the Endowment from carrying on such activity directly. Superimposing § 4943 on this setting effectively squelches the First Amendment voice of the Endowment, for it even denies it any indirect access to the public through the Houston Chronicle as well. Section 4943, then, renders the Endowment mute and insulates it from any approach to the public ear. This extreme and absolute denial of First Amendment rights should not be tolerated.

Left untouched by § 4943 are organizations other than private foundations exempt from income taxation pursuant to § 501(a) and 501(c) conducting any business enterprise, which could include First Amendment activities. Also unaffected by § 4943 are those taxable organizations conducting business ventures, particularly those operating enterprises in the exercise of their First Amendment rights. Moreover, a primary objective of the Congress in enacting § 4943 was to eliminate perceived competitive advantages enjoyed by businesses owned by private foundations relative to those owned by taxable entities, in an effort to enhance the competitive vitality of the latter.

The severe penalty tax of § 4943 was intended to have, and will have, the practical effect of an absolute prohibition on the Endowment's ownership and operation of the Houston Chronicle, and on the operation of First Amendment activities by any private foundation. Each of the objectives of § 4943 could be furthered by alternative measures imposing lesser restrictions upon the exercise of First Amendment rights. Concerns for self-dealing between foundations and their businesses were addressed directly in The Tax Reform Act of 1969 by the § 4941 prohibitions on such activity. These prohibitions could be strictly enforced to remedy or control that problem. The potential revocation of tax-exempt status for those foundations whose directors become embroiled in their foundation-held businesses to the detriment of their charitable duties should provide sufficient incentive to directors to attend to those duties. The § 4944 taxes on investments which jeopardize charitable purposes and § 4945 taxes on taxable expenditures, enacted by the 1969 Act, should also serve as constant reminders to foundation directors of their charitable responsibilities.

The use of private foundations to maintain control of family businesses should also be addressed directly, through measures short of an absolute prohibition on foundation ownership of businesses. For example, a tax could be imposed upon the contribution of a business to a private foundation where the donor retains interests in the business as well as control over the foundation. Separately incorporated businesses, such as the Houston Chronicle, pay ordinary income tax on the income generated by their activities, which reduces or eliminates any competitive advantage supposedly enjoyed by such businesses. Business enterprises conducted directly by a private foundation are subject to tax imposed by § 511 on the unrelated business income of a foundation. Strict enforcement of this tax will eliminate any competitive advantages of these businesses. The concern for the ability of a foundation-held business to obtain capital through tax-free contributions could be served by a limitation upon the deductibility of such contributions when they are devoted to the business conducted by the private foundation, or by a tax specifically laid upon the foundation-held business in such circumstances. Additionally, the 1969 Act amended § 170(b) to remove the unlimited charitable contribution deduction available to certain taxpayers under prior law. The Treasury Department's dislike of the ability of a private foundation to accumulate earnings, giving it competitive advantages and delaying the progress of funds to charitable uses, was addressed directly by the § 4942 tax on such accumulations.

Of course, these alternative modes of regulation present greater administrative costs and the risk of not correcting all abuses than does the absolute prohibition of § 4943 on foundation involvement in business. If the First Amendment teaches us anything, however, it is that certain levels of administrative inconvenience and loss of administrative efficiency must be tolerated as part of the cost of a free press.

The congressional objective bearing the closest fit with the means chosen by Congress in § 4943 is that of eliminating the competitive advantages enjoyed by foundation-held businesses, in order to immunize businesses owned by taxable organizations from this competitive threat. As applied to the Endowment, this represents a congressional desire to restrict the First Amendment activities of a certain group in order to strengthen those of other groups. Examination of the Treasury Report and Congressional reports reveals that this concern for competition was the primary or dominant objective of § 4943. Of the seven purposes of The Tax Reform Act of 1969 given in the Treasury Report, three of them, the avoidance of tax on income, the ability to capitalize businesses with tax-deductible contributions and the lack of stockholders to demand current distributions of earnings, related to the perceived competitive advantages of foundation-held businesses. The "serious competitive disadvantage" of taxable businesses was the first "undesirable result" noted in the Report as following from foundation involvement in commercial activity. Both the House and Senate reports on the bill specifically noted this concern for competition. Moreover, the Endowment's situation presents this differential treatment of First Amendment activities in its most acute form, for, as we have seen, the undocumented examples used in the Treasury Department Report, one of which was repeated in the Senate Report, were based upon the assets and activities of the Endowment, and particularly its ownership and operation of the Houston Chronicle. This differential treatment is improper under the First Amendment. The other objectives advanced by the Treasury Department and Congress in support of § 4943 do not cure this constitutional defect, because of the availability of less restrictive alternatives to further those goals and the dominance of the concern for competition in the legislative process.

The courts have on many occasions addressed the constitutionality of governmental actions affecting First Amendment rights designed to favor the activities of certain groups at the expense of another group, either as an effort to equalize the voices of the different speakers or to discriminate against one form of expression for various reasons. These cases have dealt with various types of regulation, including taxing statutes, and stand for the proposition that although newspapers, and other First Amendment activities, are not immune from regulation, the legislature can not single them out for more stringent treatment than that given other businesses. Instead, it must regulate them evenhandedly without expressing or establishing a preference for one group over the other. Nor may a legislature target a few members of the press or select individual publications within the press for less favored treatment. The legislature may not single out a particular newspaper, or a selected group of papers, for more stringent treatment than that given other newspapers. Congress has not, in § 4943, selected only the press for more severe treatment than that given other businesses, for the statute applies to all types of businesses owned by private foundations. The statute does, however, identify a certain group within the press by singling out a selected set of newspapers and other First Amendment activities for disfavored treatment. Section 4943 denies a private foundation the right to own a newspaper, while leaving untouched those newspapers printed by other tax-exempt organizations, and all those owned by taxable entities. The statute isolates the Endowment, and its ownership of the Houston Chronicle, for harsher treatment than that given the Chronicle's competitors. In fact, a principal congressional objective behind the statute was that of favoring the competitive position of the Chronicle's competitor by erasing the Endowment's ownership of the Houston Chronicle.

The Supreme Court faced this issue in Grosjean v. American Press Company, supra, where it invalidated on First

Amendment grounds a state statute which imposed a license tax upon any newspaper, magazine or other publication having a circulation of more than 20,000 copies per week. This tax, said the Court, restrained the exercise of the First Amendment freedoms of speech and press by curtailing the amount of revenue realized from advertising and by tending to restrict circulation. Discussing the purposes of the First Amendment, the Court observed that the "evils to be prevented were not the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens." 297 U.S. at 249-50, 80 L.Ed. at 668. It then struck down the tax on these grounds:

> The tax here involved is bad not because it takes money from the pockets of the [plaintiff newspapers]. If that were all, a wholly different question would be presented. It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees.
>
> . . .
>
> The form in which the tax is imposed is in itself suspicious. It is not measured or limited by the volume of advertisements. It is measured alone by the extent of the circulation of the publication in which the

> advertisements are carried, with the plain purpose of penalizing the publishers and curtailing the circulation of a selected group of newspapers.

297 U.S. at 250-51, 80 L.Ed. at 669. In a similar vein, § 4943 in its application singles out those newspapers operated by private foundations with the obvious purpose of eliminating them from the marketplace, while leaving unscathed those newspapers operated by other entities. The impact of § 4943 on foundation-held newspapers is far more severe than the tendencies to restrict advertising revenues and circulation of newspapers abhored by the Court in Grosjean. Additionally, the Treasury Report reveals that the Endowment in particular was singled out for this harsh treatment in order to enhance the profitability and strength of the Chronicle's competing newspaper.

The interpretation given Grosjean by the Supreme Court in Minneapolis Star & Tribune Company v. Minnesota Commissioner of Revenue, supra, is illuminating on this point. There, the Court struck down on First Amendment grounds a Minnesota statute imposing a "use tax" on the cost of paper and ink products over $100,000 consumed in the production of a publication in each calendar year. Writing for seven members of the Court, Justice O'Connor explained that the Grosjean result depended upon the improper motive of the state legislature in enacting the license tax on certain newspapers. The Court legitimated this inquiry into legislative motive, concluding that the Louisiana statute had been prompted by a desire to punish a group of newspapers that had been critical of Louisiana Senator Huey Long. The Court ruled that "the result in Grosjean may have been attributable in part to the perception on the part of the Court that the state imposed the tax with an intent to penalize a selected group of newspapers." 51 U.S.L.W. at 4316. Since the Court lacked access to any legislative history of the Minnesota use tax statute, and had no other indication of any impermissible motive on the part of the legislature, it held that the case could not be resolved by "simple citation to Grosjean." Id.

There is evidence that in enacting § 4943 Congress was motivated by an impermissible desire to curtail the activities of a selected group of newspapers in order to enhance the viability and profitability of their competitors. The Treasury Report which served as the basis for § 4943 and the committee reports on the Tax Reform Act of 1969 reveal that this was a purpose of the statute. Indeed, two undocumented examples relied upon by the Department of the Treasury and by Congress were based upon the Endowment and its ownership of the Houston Chronicle, revealing a desire to handicap the Chronicle in order to favor its direct competitor. This motive to penalize a selected group of newspapers and a specific newspaper in order to favor others is constitutionally impermissible.

The Court's decision in Minneapolis Star & Tribune Company points to the constitutional infirmity of § 4943 in other respects. Under the Minnesota taxing scheme involved in that case, a sales tax was imposed on most sales of goods for a price in excess of a nominal sum. Industrial and agricultural users enjoyed an exemption which shielded from the sales tax sales of components to be used in the production of goods that would themselves be sold at retail. The State also imposed a use tax on any nonexempt tangible personal property unless the sales tax was paid on the sales price. The Minneapolis Star & Tribune Company published a morning newspaper and an evening newspaper in Minneapolis. From 1967 to 1971, it was exempt from the sales and use tax but in 1971 the state legislature imposed a use tax on the cost of paper and ink products consumed in the production of a publication. Ink and paper used in publications were the only components of goods to be sold at retail that were subject to this use tax. The state later amended the statute to exempt the first $100,000 worth of ink and paper consumed by a publication in any calendar year. The Minneapolis Star & Tribune challenged the validity of this use tax on ink and paper as a violation of the guaranties of freedom of the press and equal protection. The Court found the statute invalid under the First Amendment on essentially two grounds.

Firstly, the Court objected to the application of a use tax on ink and paper used by publications, and not to any components of goods of other businesses to be sold at retail. This differential treatment, said the Court, suggested that the legislature's goal was not unrelated to the suppression of expression, and thus placed "such a burden on the interests protected by the First Amendment that we cannot countenance such treatment unless the State asserts a counterbalancing interest of compelling importance that it cannot achieve without differential taxation." 51 U.S.L.W. at 4318. The statute was not justified by the State's asserted interest in raising revenue, for "an alternative means of achieving the same interest without raising concerns under the First Amendment is clearly available: the State could raise the revenue by taxing businesses generally, avoiding the censorial threat implicit in a tax that singles out the press." Id. The Court rejected the State's argument that the use tax was merely a substitute for the sales tax, which would be constitutional as applied to the press, for the State had offered no explanation of why it chose to use a substitute for the sales tax rather than the sales tax itself, and the power to treat the press differentially would lodge with the legislature too great a potential for censorship of newspapers.

Also, the Court felt that courts as institutions were poorly equipped to evaluate the relative burdens of various methods of taxation. As noted previously, § 4943 does not impose its penalty tax differentially only on the press, for it applies to all types of businesses operated by private foundations.

The second basis for the Court's finding of invalidity in the Minnesota use tax on ink and paper, however, reveals a similar defect in § 4943. The Court ruled that the tax violated the First Amendment "not only because it singles out the press, but also because it targets a small group of newspapers." 51 U.S.L.W. at 4319. Because of the $100,000 exemption, only a handful of publishers paid the tax. The Court ruled that "[w]hatever the motive of the legislature in this case, we think that recognizing a power in the State not only to single out the press but also to tailor the tax so that it singles out a few members of the press presents such a potential for abuse that no interest suggested by Minnesota can justify the scheme." 51 U.S.L.W. at 4320. In general, the Court concluded that a "tax that singles out the press, or that targets individual publications within the press, places a heavy burden on the State to justify its action." Id. In a similar fashion, § 4943 targets a few members of the press for disfavored treatment, in an effort to enhance the competitive vitality of their direct competitors. As the Minneapolis Star & Tribune Company Court indicated, such an expansive and potentially abusive power should not be recognized in a legislature, particularly since the objectives of § 4943 can be served without this differential taxation.

Other decisions have announced the unconstitutionality of such differential treatment of selected members of the press. In Buckley v. Valeo, supra, the Court held unconstitutional certain limitations on campaign expenditures in the Federal Election Campaign Act of 1971, 2 U.S.C. §§ 431 et seq.. The first provision analyzed by the Court imposed a $1,000 limitation on expenditures by any person relative to a clearly identified candidate during a calendar year. The Court concluded that the governmental interest in preventing corruption and the appearance of corruption was inadequate to justify this ceiling on independent expenditures. Addressing another interest advanced by the government in an attempt to support the expenditure limitation, the Court held:

> It is argued, however, that the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections serves to justify the limitation on express advocacy of the election or defeat of candidates imposed by [the] expenditure ceiling. But the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly

> foreign to the First Amendment, which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,'" and "'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" [citations omitted].

424 U.S. 48-49, 46 L.Ed.2d at 704-05. On these grounds, the Court concluded that the expenditure limitation was unconstitutional under the First Amendment. Similar grounds prompted the same conclusion regarding the Act's limitation on expenditures by candidates from their personal or family resources and ceilings placed on overall campaign expenditures by candidates seeking nomination for election and election to federal office, even though these limitations were neutral as to the content of the ideas expressed by the candidates. In enacting § 4943, Congress desired to terminate the ownership of newspapers by private foundations, thereby prohibiting the exercise by a private foundation of its First Amendment right to own and publish a newspaper, in an effort to enhance the relative viability, and correspondingly the strength of the voices, of newspapers and other First Amendment activities operated by taxable entities. Buckley reveals that such efforts to restrict the speech of some elements of our society in order to enhance the voices of others are foreign to the First Amendment and can not be tolerated.

The Court echoed the Buckley rule in First National Bank of Boston v. Bellotti, supra, in striking down a state statute which prohibited corporations from making contributions or expenditures for the purpose of influencing or affecting the vote on referendum proposals other than those materially affecting the property, business or assets of the corporation. One interest raised by the state in justification of the prohibition was that of sustaining the active role of the individual citizen in the electoral process. Noting that the Constitution "protects expression which is eloquent no less than that which is unconvincing," the Court found illegitimate the state's argument that the greater resources of corporations allowed them to drown out the voices of individuals on referendum proposals. 435 U.S. at 790, 55 L.Ed.2d at 727. On this point, the Court repeated the Buckley holding that the First Amendment prohibits efforts by the government to restrict the speech of some elements in society in order to enhance the relative voice of others. Writing for the Court, Justice Powell specifically rejected the justification for the statute accepted by Justice White in dissent that because corporations are given certain privileges by law they are able to amass wealth and then to dominate debate on an issue. Regarding Justice White's position, Justice Powell wrote:

> He concludes from this generalization that the State has a subordinating interest in denying corporations access to debate and, correspondingly, in denying the public access

> to corporate views. The potential impact of this argument, especially on the news media, is unsettling. One might argue with comparable logic that the State may control the volume of expression by the wealthier, more powerful corporate members of the press in order to "enhance the relative voices" of smaller and less influential members. . . . [T]his concept contradicts basic tenets of First Amendment jurisprudence.

435 U.S. at 791 n.30, 55 L.Ed.2d at 727 n.30. This stern prohibition on legislative efforts to handicap the First Amendment activities of groups perceived to have greater resources or influence in order to enhance the relative voices of other groups applies with full force to the instant situation. Congress expressly designed § 4943 to eradicate the competitive advantages assertedly enjoyed by foundation-held newspapers because of their accumulations of earnings and greater financial resources in order to eliminate the competitive pressures imposed by these newspapers upon papers operated by taxable organizations. The restraint on First Amendment activity presented by § 4943 is more severe than the expenditure restrictions on corporations eschewed by the Court in Bellotti, for § 4943 acts as an absolute prohibition on the exercise by a private foundation of its First Amendment right to direct and publish a newspaper. Also, Congress singled out the Endowment in particular for harsh treatment in order to favor its competitors.

Ad World, Inc. v. Township of Doylestown, supra, provides another illustration of the constitutional invalidity in differential treatment of First Amendment activities. There, the court held unconstitutional a local ordinance which prohibited the distribution of advertising material by placing it at a residence or on the residential mailbox of the person owning or occupying the residence without the person's consent. The plaintiff, which published a tabloid containing advertising and consumer and community information and distributed it by leaving the paper on the premises of residences in the area, claimed that the ordinance unconstitutionally infringed its right to free speech and press. The court agreed, concluding that the ordinance was not sufficiently related to the municipality's asserted objective of preventing or reducing burglary and vandalism. This rationale, said the court, was undermined by the ordinance's failure to prohibit the delivery of political pamphlets, religious materials or established newspapers or magazines. This unexplained differential treatment led to the decision that the ordinance was invalid.

Also enlightening on this point is Federal Communications Commission v. National Citizens Committee for Broadcasting, 436 U.S. 775, 56 L.Ed.2d 697 (1978), where the plaintiffs, which included a group of newspaper owners, challenged the validity of regulations of the Federal Communications Commission which barred the common ownership of a radio or television broadcast station and a daily newspaper located in the same community. In communities where there was common ownership of the only daily newspaper and the only broadcast station, or of the only daily newspaper and the only television station where there was more than one broadcast station, the regulations required divestiture of either the newspaper or the broadcast station within five years. The Court rejected the assertion by the newspapers that these regulations violated their First Amendment freedoms, largely on the ground that because of the physical limitations of the broadcast spectrum, there is no "unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish." 436 U.S. at 799, 56 L.Ed.2d at 716. This ruling at least implies that comparable divestiture requirements affecting the ownership of a publication, and not involving the limited broadcast spectrum, would not be tolerated by the Court. In the case, the Court was unconvinced by the newspapers' argument that they had been unfairly singled out for more stringent treatment than other license applicants, concluding that the regulations at issue treated newspaper owners in the same fashion as other owners of the major media of mass communications had already been treated under existing multiple-ownership rules. The Court also distinguished the tax invalidated in Grosjean, the effect of which was to limit the circulation of information to which the public is entitled, on the grounds that the Commission rules would enhance the diversity of information heard by the public and promote the public interest in diversified mass communications by requiring diversified ownership. In contrast, § 4943 does single out for different treatment foundation-held newspapers and other First Amendment activities, relative to those owned and operated by other organizations. The effect of the statute will be to reduce the diversity in ownership of newspapers by eliminating the entire group of private foundations as potential owners and operators of such publications. Additionally, the Court's willingness to tolerate restrictions on broadcast rights because of the limitations of the broadcast spectrum is irrelevant to the instant situation.

Several cases involving discriminatory treatment in the First Amendment area have specifically involved tax exemption provisions of state statutes or the Code. Speiser v. Randall, 357 U.S. 513, 2 L.Ed.2d 1460 (1958), though it involved a content-sensitive limitation upon a tax exemption, is relevant on this general point. There, the Court held unconstitutional a state statute which required as a prerequisite to qualification for a property tax exemption the execution of a statement declaring that the claimant did not advocate the unlawful overthrow of government or the support of a foreign government engaged in hostilities with the United States. The Court ruled:

> It cannot be gainsaid that a discriminatory denial of a tax exemption for engaging in speech is a limitation on free speech. . . . It is settled that speech can be effectively limited by the exercise of the taxing power. [citation to Grosjean]. To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech. The [State is] plainly mistaken in [its] argument that, because a tax exemption is a "privilege" or "bounty," its denial may not infringe speech.

357 U.S. at 518, 2 L.Ed.2d at 1468.

Tax exemptions, however, usually invoke among courts a certain deference to legislative decisions, because of the often-stated proposition that tax exemptions are "a matter of legislative grace." See Big Mama Rag, Inc. v. United States, 631 F.2d 1030, 1034 (D.C. Cir. 1980). A probable attempted justification for the differential treatment afforded by § 4943 to newspapers owned by private foundations relative to those owned by taxable entities is that foundation-held businesses enjoy competitive advantages by virtue of the foundation's privileged status as a tax-exempt organization. In enacting § 4943, this argument would continue, Congress was merely attempting to offset these competitive advantages enjoyed by foundation-held newspapers originally provided them by Congress in the form of tax-exempt status. The newspapers should not be heard to complain about efforts by the Congress to retrieve or eliminate privileges it had itself originally granted. Accordingly, Congress should be allowed to equalize the competitive positions of businesses owned by tax-exempt and non-exempt organizations, because it was responsible for these advantages in the first place.

This type of argument has surfaced in several opinions. For example, the Supreme Court, in Cammarano v. United States, 358 U.S. 498, 3 L.Ed.2d 462 (1959), sustained over First Amendment objection regulations of the Treasury Department disallowing the deduction as business expenses of sums spent on lobbying activities or to promote or defeat legislation. The Court reasoned:

> Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the Internal Revenue Code. Nondiscriminatory denial of deduction from gross income to sums expended to promote or defeat legislation is plainly not "'aimed at the suppression of dangerous ideas.'" . . . Rather, it appears to us to express a determination by Congress that since purchased publicity can influence the fate of legislation which will affect, directly or

> indirectly, all in the community, everyone in the community should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned. [citation omitted].

358 U.S. at 513, 3 L.Ed.2d at 472. Cammarano is immediately distinguishable from the present situation. Section 4943 was not intended merely to require that newspapers and other enterprises conducted by private foundations pay taxes on their operations, as other newspapers must do. Nor does it merely have this sole effect. The Houston Chronicle is a taxable entity separate from the Endowment. It pays ordinary income taxes on its operations, as do other businesses. If the newspaper activities were carried on directly by the Endowment, the income it produced would be subject to the §§ 511-514 taxes on unrelated business income. Neither the Endowment nor the Houston Chronicle challenges the legitimacy of these taxes on the income generated by the paper. Both willingly and without reservation recognize the Houston Chronicle's responsibility for ordinary income taxes. Thus, the problem is not that this income escapes untaxed. Congress chose to use § 4943 not as a method to raise revenue, but instead to establish a penalty tax tantamount to an absolute prohibition on the Endowment's ownership of the Houston Chronicle. The statute unequivocally forbids the Endowment's exercise of its First Amendment right to own and publish the Houston Chronicle. Nor

does § 4943 leave private foundations and other organizations on the same footing, as did the tax deduction statute in Cammarano, for it effectively prohibits operation of a newspaper by a private foundation in an effort to enhance the competitive vitality of papers published by other organizations.

The plaintiff in Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864, 38 L.Ed.2d 84 (1973), was a nonprofit religious corporation. Its exempt status had been revoked by the Internal Revenue Service in part because it had engaged in lobbying activities and had intervened in political campaigns on behalf of candidates in violation of the restrictions placed on such activity by § 501(c)(3). Rejecting the plaintiff's argument that these limitations impermissibly restricted its rights to free speech, the court ruled:

> In light of the fact that tax exemption is a privilege, a matter of grace rather than right, we hold that the limitations contained in Section 501(c)(3) withholding exemption from nonprofit corporations do not deprive Christian Echoes of its consitutionally guaranteed right of free speech. The taxpayer may engage in all such activities without restraint, subject, however, to withholding of the exemption or, in the alternative, the taxpayer may refrain from such activities and obtain the privilege of exemption.

470 F.2d at 857. Christian Echoes was not a case, however, where the Congress had acted purposefully to favor the First Amendment

activities of one group of speakers at the expense of another group, as it did in § 4943. Nor is the Endowment presented with the easy alternatives described by the court in Christian Echoes. It can not simply forego its tax-exempt status in order to continue ownership of the Houston Chronicle. The Endowment's private foundation status will be presumed to continue until terminated pursuant to § 507. The severe penalty imposed by § 507 upon termination of private foundation status effectively precludes the Endowment from pursuing that course. Should it attempt to do so, the Endowment would face an extraordinary tax equal to the lesser of the aggregate tax benefit resulting from tax-exempt status since its formation or the value of its net assets. This statutory scheme leaves the Endowment with no alternative but to forfeit its ownership of the Houston Chronicle. The conjunction of the penalty taxes of § 4943 and § 507 deny the Endowment any possibility of retaining the newspaper. Additionally, it must be remembered that § 4945 and 501(c)(3) prohibit the Endowment from directly engaging in essential activities normally protected by the First Amendment. The net result of these statutory provisions strips the Endowment of any mode of exercise of its basic First Amendment freedoms. Moreover, Congress enacted § 4943 with the specific desire to force the Endowment to relinquish the Houston Chronicle in order to strengthen the voices of its immediate competitors. The devastating effect of § 4943 and its complementary provisions on the First Amendment rights of the Endowment is obvious. The potential for abuse of such a power in any legislature - allowing it selectively to eliminate the First Amendment activity of certain members of the press, or any form of media, to enhance the efforts of others - is staggering.

This untenable situation also distinguishes the present analysis of § 4943 from the Supreme Court's position in Taxation With Representation of Washington v. Regan, _____ U.S. _____, 51 U.S.L.W. 4583 (May 23, 1983). The plaintiff in that action ("TWR") was a non-profit corporation organized to promote its view of the "public interest" in the area of federal taxation. Its application for tax-exempt status was denied by the Internal Revenue Service on the grounds that a substantial part of its activities consisted of attempting to influence legislation, which is not permitted by § 501(c)(3) of the Code. TWR filed suit claiming that this prohibition against substantial lobbying was unconstitutional under the First Amendment and the equal protection component of the Fifth Amendment's due process clause.

The First Amendment challenge focused on the differences between § 501(c)(3) organizations and § 501(c)(4) groups. Contributions to § 501(c)(3) organizations are tax deductible under § 170(c)(2), while contributions to § 501(c)(4) organizations are not. Section 501(c)(4) organizations, unlike § 501(c)(3) groups, are permitted to engage in substantial lobbying to advance their purposes. Concluding that TWR's First Amendment attack on the prohibition against substantial lobbying in § 501(c)(3) was motivated by its desire to use tax-deductible contributions to support substantial lobbying activities, the Court ruled that the case was controlled by Cammarano and upheld the restriction. The Court saw the prohibition of lobbying by § 501(c)(3) organizations, which can receive tax-deductible contributions, merely as a refusal by Congress to subsidize those lobbying activities:

> The Code does not deny TWR the right to receive deductible contributions to support its non-lobbying activity, nor does it deny TWR any independent benefit on account of its intention to lobby. Congress has merely refused to pay for the lobbying out of public monies. This Court has never held that the Court must grant a benefit such as TWR claims here to a person who wishes to exercise a constitutional right.
>
> This aspect of the case is controlled by Cammarano . . . [where] we held that Congress is not required by the First Amendment to subsidize lobbying. . . . In this case, like in Cammarano, Congress has not infringed any First Amendment rights or regulated any First Amendment activity. Congress has simply chosen not to pay for TWR's lobbying.

51 U.S.L.W. at 4585. In contrast, in § 4943 Congress has

infringed the First Amendment rights of the Endowment in an effort directly to eliminate its First Amendment activities in the Houston Chronicle. Congress has gone far beyond any mere refusal to subsidize those activities, choosing instead to force the Endowment to forfeit its ownership of the newspaper. The Taxation With Representation Court observed that TWR could easily obtain tax-deductible contributions for its non-lobbying activity by using a § 501(c)(3) organization for non-lobbying purposes and a § 501(c)(4) organization for lobbying. No such facile alternative arrangement is available to the Endowment to enable it to continue to address the public ear. The Endowment does not claim that the First Amendment requires Congress to subsidize the operation of the Houston Chronicle. The ordinary income taxes paid by the Houston Chronicle eliminate the possibility of any such subsidy. The First Amendment does, however, demand that the Endowment be given an avenue of access to the public. Section 4943 eliminates any such access entirely.

Aside from these many distinctions that can be drawn between the present situation and the circumstances of Cammarano, Christian Echoes and Taxation With Representation, there are other arguments to counter the assertion that in § 4943 Congress was merely attempting to avoid subsidizing the First Amendment activities of the Endowment and to eradicate the competitive advantages originally made available by its tax-exempt privilege. In his dissent in First National Bank of Boston v. Bellotti, supra, referred to previously, Justice White raised the same argument to support his position that the state statute's limitation upon expenditures by corporations on referendum proposals was a proper effort by the state to equalize the relative voices of corporations and individuals. Justice White reasoned that since corporations are artificial entities created by law and granted attributes by the states in order to increase their economic viability, such as special rules relating to limited liability, perpetual life and the accumulation, distribution, and taxation of assets, the state had placed corporations in a position to control large amounts of economic power. He continued:

> It is not one of equalizing the resources of opposing candidates or opposing positions, but rather of preventing institutions which have been permitted to amass wealth as a result of special advantages extended by the State for certain economic purposes from using that wealth to acquire an unfair advantage in the political process . . . The State need not permit its own creation to consume it.

435 U.S. at 809, 55 L.Ed.2d at 739. As discussed above, this position was resoundingly rejected by Justice Powell, writing on behalf of the majority of the Court.

Furthermore, if Congress were merely attempting to correct the competitive advantages it had bestowed upon foundation-held businesses, the penalty tax of § 4943 has gone far beyond any measure necessary to effect that objective. The severity of the § 4943 tax will force the Endowment, and other foundations, to comply with the divestiture requirements and thereby amounts to an absolute prohibition on the Endowment's ownership of the Houston Chronicle. There is no alternative which would allow the Endowment to retain the newspaper. Here the language of the Court in Pittsburgh Press Company v. Pittsburgh Commission on Human Relations, supra, is apposite. In that case, the Court sustained over First Amendment objection an ordinance which prohibited newspapers from carrying help-wanted advertisements in sex-designated columns. The Court reasoned:

> This is not a case in which the challenged law arguably disables the press by undermining its institutional viability. . . .
>
> [N]o suggestion is made in this case that the Ordinance was passed with any purpose of muzzling or curbing the press. Nor does Pittsburgh Press' argue that the Ordinance threatens its financial viability or impairs in any significant way its ability to publish and distribute its newspaper.

413 U.S. at 382-83, 37 L.Ed.2d at 675-76. Section 4943 presents the very sort of threat to the Endowment's ability to publish and distribute its newspaper warned against by the Court in Pittsburgh Press.

The Court's opinion in Minneapolis Star & Tribune Company v. Minnesota Commissioner of Revenue, supra, indicates its reluctance to allow a legislature to justify differential treatment of the press on the grounds that it is merely correcting imbalances in its tax system or establishing tax burdens on certain newspapers equal to those upon other taxpayers. The State of Minnesota attempted to justify its use tax upon ink and paper by arguing that the scheme actually favored the press over other businesses, because the use tax imposed the same rate as did the sales tax, but for the press this rate applied to the cost of components rather than to the sales price. Rejecting this argument, the Court ruled:

> We would be hesitant to fashion a rule that automatically allowed the State to single out the press for a different method of taxation as long as the effective burden was no different from that on other taxpayers or the burden on the press was lighter than on other businesses. One reason for this reluctance is that the very selection of the press for special treatment threatens the press not only with the current *differential* treatment, but with the possibility of subsequent differentially more *burdensome* treatment. Thus, even without actually imposing an extra burden on the press, the government might be able to achieve censorial effects, for "[t]he threat of sanctions may deter [the] exercise of [First Amendment] rights almost as potently as the actual application of sanctions." [citation ommitted] [emphasis original].

51 U.S.L.W. at 4319. The Court's refusal to allow a legislature to open the door to regulation of the press or selected members of the press upon the attempted justification of its actions as an effort to equalize the tax burden on newspapers and other taxpayers, or even to favor the newspapers, leads to the conclusion that Congress should not be allowed to justify the harsh treatment given foundation-held newspapers in § 4943 simply as an attempt to correct advantages they enjoy because of the foundations' tax-exempt status.

It should also be noted that even if the tax imposed by § 4943 upon the Endowment for its retention of control of the Houston Chronicle were at a lower level, or the penalty imposed by § 507 upon termination of private foundations status were of a lower amount, such that the Endowment could either pay the § 4943 tax or feasibly terminate its private foundation in order to maintain ownership of the Houston Chronicle, the burden upon the exercise of the Endowment's First Amendment right to own and operate a newspaper would still present serious constitutional questions. Such a scenario would involve the payment by the Endowment of what would amount to a licensing fee under § 4943 for permission to retain the Houston Chronicle, or the tax benefit of a tax exemption would be conditioned upon forebearance of the First Amendment right to operate a newspaper. Flat license taxes upon the exercise of a First Amendment freedom are invalid. In Murdock v. Pennsylvania, supra, the Court struck down a municipal ordinance requiring all persons distributing literature or soliciting orders for goods of any kind to obtain a license and pay a certain fee. Holding that such fees, other than those imposed merely as regulatory measures to defray the expenses of policing the activities in question, upon the exercise of the freedoms of speech, press and religion guaranteed by the First Amendment are unconstitutional, the Court ruled that a "state may not impose a charge for the enjoyment of a right granted by the federal constitution." 319 U.S. at 113, 87 L.Ed. at 1298. The Court noted:

> It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed by the City . . . is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment.

319 U.S. at 112, 87 L.Ed. at 1298. The Houston Chronicle pays ordinary income taxes upon the income of its operations. If the Endowment directly carried on the business of a newspaper, the income produced would be subject to the § 511 tax on unrelated business income. The Endowment does not dispute Congress' power to levy such taxes on income. It is quite another thing,

however, to exact a tax from the Endowment for the privilege of exercising its First Amendment right to own and operate a newspaper. This Congress may not do. Accord, Chemline, Inc. v. City of Grand Prairie, 364 F.2d 721 (5th Cir. 1966) (court upheld a license fee for motion picture display permits where imposed to defray the expense of investigation and issuance of the license); Bayside Enterprises, Inc. v. Carson, supra (court invalidated a municipal license fee for businesses operating in the adult entertainment field). Any attempt to justify the § 4943 penalty tax as a mere license tax can not withstand judicial scrutiny.

If the Code did grant the Endowment the option of terminating its tax-exempt status in order to continue operation of the Houston Chronicle, the statute would in effect condition the receipt of a tax benefit upon the Endowment's forfeiture of its First Amendment right to operate a newspaper. The Supreme Court in Perry v. Sindermann, 408 U.S. 593, 597, 33 L.Ed.2d 570, 577 (1972), established this rule:

> For at least a quarter-century, this Court has made clear that even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benfit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests - especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his

> constitutionally protected speech or association, his exercise of those freedoms would in effect be penalized and inhibited. . . . Such interference with constitutional rights is impermissible.

The Court in Federal Communications Commission v. National Citizens Committee for Broadcasting, supra, rejected the argument that the regulations there involved unconstitutionally conditioned the receipt of a broadcast license upon forfeiture of the right to publish a newspaper. The Court reasoned that a newspaper owner was not required to forfeit any right in order to acquire a license for a station located in another community. In contrast, the Endowment would have no choice but to forfeit its right to operate a newspaper. Additionally, the Court in Taxation With Representation of Washington v. Regan, supra, was unconvinced by the argument that the lobbying restrictions of § 501(c)(3) conditioned the receipt of tax benefits upon forbearance of lobbying activity. The Court reasoned that a tax-exempt organization could structure itself along dual lines under both § 501(c)(3) and § 501(c)(4) of the Code and use the latter organization only for lobbying purposes, since § 501(c)(4) contains no lobbying restrictions. Again, the Endowment would be left with no comparable alternative arrangement to preserve its tax-exempt status as well as its operation of the Houston Chronicle.

D. O'Brien Conclusions.

The overinclusiveness and underinclusiveness of § 4943 in terms of the furtherance of its underlying objectives; the presence of a congressional purpose to enhance the viability of First Amendment activities owned by taxable organizations at the expense of those owned by private foundations, a purpose not entirely unrelated to the suppression of expression; and the severe restrictions imposed by § 4943 on free expression, far in excess of those essential to further the governmental interests involved, including the presence of an impermissible congressional motive, the absolute nature of § 4943, the availability of alternatives to pursue the governmental interests imposing a lesser restriction upon the exercise of First Amendment freedoms, the combined effects of § 4943, § 501(c)(3) and § 4945 which mute the Endowment and deny it access to the public, and the impropriety of the primary purpose of § 4943, that of restricting the First Amendment activities of the Endowment in order to favor those of its competitors, reveal the constitutional invalidity of § 4943. The First Amendment denies Congress this overweening power to regulate protected activity. The Supreme Court has refused to allow Congress to select certain members of the media for disfavored treatment, out of fear of the potential for the very type of denial of basic First Amendment freedoms presented by § 4943. Allowing Congress to leave an entity, like the Endowment, without a voice not only robs it of any access to the public, it also deprives the public of a source of information and ideas. To permit the government to use its tax system to silence a group of would-be speakers in order to enhance the strength of others would cast us upon the road to ruin so often decried by the Court, a road which would lead, for example, to denying a private foundation the right to conduct a peaceful public assembly or debate on an issue merely because its tax-exempt status would enable it to afford a greater number, or more attractive, placards than could a taxable organization in conducting a similar rally. Surely the untolerable nature of such turn of events is obvious.

This conclusion is reinforced by the policies served by the First Amendment's protection of free speech and press. The First Amendment was designed to foster individual self-expression and also to afford the public access to discussion, debate, and the dissemination of information and ideas. First National Bank of Boston v. Bellotti, 435 U.S. at 783, 55 L.Ed.2d at 722. "'[A]n untrammeled press [is] a vital source of public information', . . . and an informed public is the essence of a working democracy." Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue, supra, 51 U.S.L.W. at 4318, quoting

Grosjean v. United States, supra, 297 U.S. at 250, 80 L.Ed. at 668.

The Supreme Court, in upholding the application of the Sherman Antitrust Act to newspapers in Associated Press v. United States, supra, noted:

> The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all and not for some.

326 U.S. at 20, 89 L.Ed. at 2030. Recent years have seen a trend toward concentration in the newspaper industry, and particularly a trend towards newspaper ownership by conglomerate newspaper chains. The Supreme Court has previously indicated how this concentration disserves the policies behind the First Amendment:

> Newspapers have become big business and there are far fewer of them to serve a larger literate population. Chains of newspapers, national newspapers, national wire and news services, and one-newspaper towns, are the dominant features of a press that has beome non-competitive and enormously powerful and influential in its capacity to manipulate popular opinion and change the course of events.

> . . .
>
> The result of these vast changes has been to place in a few hands the power to inform the American people and shape public opinion. Much of the editorial opinion and commentary that is printed is that of syndicated columnists distributed nationwide and, as a result, we are told, on national and world issues there tends to be a homogeneity of editorial opinion, commentary, and interpretive analysis. The abuses of bias and manipulative reportage are, likewise, said to be the result of the vast accumulations of unreviewable power in the modern media empires.

Miami Herald Publishing Company v. Tornillo, 418 U.S. 241, 249-50, 41 L.Ed.2d 730, 736-37 (1974).

Preservation of the Houston Chronicle as a newspaper independent of this trend towards conglomerate ownership will serve the First Amendment policies of maintaining diverse and antagonistic sources of information for the American public. Forcing the Endowment to divest itself of the Houston Chronicle, which would present the risk of its purchase by such a newspaper chain, would run directly counter to these First Amendment policies.

E. The Overbreadth Doctrine: Facial Invalidity.

As noted previously, § 4943 does not on its face regulate First Amendment activity. Rather, it is only in its application to the Endowment that an effect on First Amendment freedoms appears. The O'Brien analysis leads to a conclusion that application of § 4943 to the Endowment, or to any foundation operating a business with First Amendment overtones, contravenes the principles and policies of the First Amendment.

Now that these aspects in which § 4943 infringes upon First Amendment freedoms have been detected, however, a constitutional challenge to the facial validity of § 4943 as a whole arises under the overbreadth doctrine. If accepted, this challenge would cause the Supreme Court to strike down § 4943 in its entirety, precluding its application to any foundation conducting any sort of business enterprise.

The overbreadth doctrine applies where a statute regulates certain activities obviously within the scope of government control, but in so doing encompasses behavior protected by the First Amendment as well. A law is void on its face if it "does not aim specifically at evils within the allowable area of [government] control, but . . . sweeps within its ambit other activities that constitute an exercise . . ." of rights of expression or association protected by the First Amendment. Thornhill v. Alabama, 310 U.S. 88, 97, 84 L.Ed. 1093, 1100 (1940) (statute prohibiting all picketing void on its face since it banned peaceful picketing protected by the First Amendment). See Tribe, supra, at 710. "When otherwise valid governmental regulation sweeps so broadly as to impinge upon activity protected by the First Amendment, its very overbreadth may make it unconstitutional." Dandrige v. Williams, 397 U.S. 471, 484, 25 L.Ed.2d 491, 501 (1970). If the elements of the overbreadth doctrine are satisfied, the statute in question is struck down on its face and any enforcement of it is entirely forbidden. Broadrick v. Oklahoma, 413 U.S. 601, 37 L.Ed.2d 830 (1973).

The overbreadth doctrine was popular with the Supreme Court during the Warren era. See, Note, The First Amendment Overbreadth Doctrine, 83 Harv.L.Rev. 844 (1970). In subsequent years, however, the Supreme Court has restricted its scope. Currently a statute will be invalidated on overbreadth grounds only if:

> (1) the statute reaches a substantial amount of constitutionally protected conduct; and
>
> (2) there exists no possible way to separate the law's constitutional from its unconstitutional applications by a narrowing construction by a court with proper authority or by the legislature so as to eliminate the law's unconstitutional applications.

Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 71 L.Ed.2d 362 (1982); Parker v. Levy, 417 U.S. 733, 41 L.Ed.2d 439 (1974); Arnett v. Kennedy, 416 U.S. 134, 40 L.Ed.2d 15 (1974); Broadrick v. Oklahoma, supra; Grayned v. City of Rockford, 408 U.S. 104, 33 L.Ed.2d 222 (1972); Gooding v. Wilson, 405 U.S. 518, 31 L.Ed.2d 408 (1972).

In Gooding v. Wilson, supra, the Court invalidated a Georgia statute which made it a misdemeanor for any person, without provocation, "to use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace," concluding that the state courts had not construed the statute to limit its reach to the "fighting words" category of speech not protected by the First Amendment. The Court gave this description of the policies underlying the overbreadth doctrine:

> "[B]ecause the line between speech unconditionally guaranteed and speech which may legitimately be regulated, suppressed, or punished is finely drawn," Spieser v. Randall, 357 U.S. 513, 525, 2 L.Ed.2d 1460, 1472 (1958), "[i]n every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom," Cantwell v. Connecticut, 310 U.S. 296, 304, 84 L.Ed. 1213, 1218 (1940). In other words, the statute must be carefully drawn or be authoritatively construed to punish only unprotected speech and not be susceptible of application to protected expression. "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." NAACP v. Button, [371 U.S. 415, 433, 9 L.Ed.2d 405, 418 (1963)].

405 U.S. at 522, 31 L.Ed.2d at 414.

In Grayned v. City of Rockford, supra, the Court rejected an overbreadth challenge to a municipal ordinance which prohibited disturbing a school session by wilfully making a noise or diversion while on adjacent public or private grounds. The Court opened its analysis by referring to another policy behind the overbreadth doctrine, that of eliminating from the books statutes which, because of their broad scope, deter privileged activity. "The crucial question, then, is whether the ordinance sweeps within its prohibitions what may not be punished under the First and Fourteenth Amendments." 404 U.S. at 115-16, 33 L.Ed.2d at 231. An overly broad law has a chilling effect upon First Amendment activity, in that those whose conduct may be protected by the First Amendment will nonetheless be deterred from engaging in it because of fear of application of the statute.

Section 4943 applies to certain activities clearly within the scope of governmental control, for requiring foundations to divest themselves of business enterprises which do not involve the exercise of First Amendment freedoms presents no First Amendment difficulty. The statute also, however, sweeps within its scope those foundations conducting businesses which do have First Amendment overtones and which, under the previous discussion, may not be so regulated.

The first step of the overbreadth analysis requires a determination of whether this overreaching by § 4943 is substantial. This turns upon whether the statute reaches a substantial amount of constitutionally protected conduct. If it does not, the overbreadth challenge must fail. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, *supra*. In *Broadrick v. Oklahoma*, *supra*, although it recognized that the "First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society," the Court observed that the overbreadth doctrine is "strong medicine," to be "employed by the Court sparingly and only as a last resort." 413 U.S. at 611-612, 613, 37 L.Ed.2d at 839-40, 841. The Court ruled that "particularly where conduct and merely speech is involved, we believe that the overbreadth of the statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." 413 U.S. at 615, 37 L.Ed.2d at 842. It went on to uphold a state regulation prohibiting state employees from soliciting or receiving political contributions, becoming a candidate for paid public office, being a member of a political party's committee or of a political club, or taking part in the management or affairs of any political party or in any political campaign, except to express an opinion and to cast a vote, partly because the statute regulated a "substantial spectrum of conduct that is . . . manifestly subject to state regulations . . . ." 413 U.S. at 616, 37 L.Ed.2d at 842. Similarly, the Court in Parker v. Levy, supra, rejected an overbreadth challenge to a provision in the Uniform Code of Military Justice which prohibited "conduct unbecoming an officer or gentleman," and "disorders and neglects to the prejudice of good order and discipline in the armed forces," ruling that:

> This Court has, however, repeatedly expressed its reluctance to strike down a statute on its face where there were a substantial number of situations to which it might be validly applied. Thus, even if there are marginal applications in which a statute would infringe on First Amendment values, facial invalidation is inappropriate if the "remainder of the statute . . . covers a whole range of easily identifiable and constitutionally proscribable . . . conduct . . . ." [citation omitted].

417 U.S. at 760, 41 L.Ed.2d at 460. The Court upheld the regulations at issue because there was a "wide range of the conduct of military personnel . . ." to which the regulations could be applied without infringing the First Amendment, while First Amendment difficulties merely "lurk[ed] at the fringes . . ." of the regulations. 417 U.S. at 760, 41 L.Ed.2d at 460.

Of course, there are many private foundations conducting business enterprises which do not implicate First Amendment freedoms, to which § 4943 may be validly applied. On the other hand, constitutional difficulties arise regarding the application of § 4943 to any foundation conducting a business enterprise with any First Amendment overtones, and thus the statute will reach a substantial amount of constitutionally protected conduct. This restriction on First Amendment freedoms does not merely lurk at the fringes of the statute, for § 4943 eliminates foundation ownership of any business involving expression or speech.

The Broadrick v. Oklahoma Court ruled that the facial overbreadth doctrine will not be invoked "when a limiting construction has been or could be placed upon the challenged statute." 413 U.S. at 613, 37 L.Ed.2d at 841. Where a state statute is involved, a court will search for narrowing construction given the law by state courts, to determine whether its scope has been limited so as to exclude activities protected by the First Amendment. Gooding v. Wilson, supra. If the relevant statute is a federal one, the Supreme Court itself can provide the limiting construction, if one is possible. In Arnett v. Kennedy, the Court upheld over an overbreadth challenge a provision of the Lloyd-La Follette Act, 5 U.S.C. § 7501, which authorized the removal or suspension of a nonprobationary government employee "only for such cause as will promote the efficiency of the service." The Court construed the statute to proscribe only that public speech which damages or impairs the reputation and efficiency of the employee's agency, the sort of speech which can be regulated by the government. The Court held that "the language 'such cause as will promote the efficiency of the service' in the Act excludes constitutionally protected speech, and the statute is therefore not overbroad." 416 U.S. at 162, 40 L.Ed.2d at 38. Thus, the Supreme Court is willing to construe a statute narrowly to exclude its application to First Amendment activity. In all likelihood, if the Supreme Court were presented with an overbreadth challenge to § 4943, it would follow this approach by construing the statute to apply only to those foundation-held businesses which do not implicate First Amendment freedoms. This would allow the Court to uphold the statute on its face despite an overbreadth challenge, though any application to the Endowment would still be avoided.

Although this apparently would be the course followed by the present Supreme Court, forceful arguments can be made in favor of rejecting the Arnett v. Kennedy rule. Such an approach implicates another doctrine applicable to statutes which impinge upon First Amendment activities, the void for vagueness doctrine of the due process clauses of the Fifth and Fourteenth Amendments. A law which impinges upon First Amendment freedoms may not be so vague that "men of common intelligence must necessarily guess at its meaning." Broadrick v. Oklahoma, supra, 413 U.S. at 607, L.Ed.2d at 837. In Grayned v. City of Rockford, supra, the Supreme Court described the underlying principles of the vagueness doctrine as follows:

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to "'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked." [citations omitted].

408 U.S. at 108-09, 33 L.Ed.2d at 227-28. The Grayned Court found no unconstitutional vagueness in a city ordinance which prohibited disturbing a school session by wilfully making a noise or diversion while on adjacent public or private grounds. In Broadrick v. Oklahoma, the Court rejected a vagueness challenge to the state regulation limiting political activity of state

employees, concluding that the language of the regulation was sufficient to give the "ordinary person exercising ordinary common sense . . ." understanding of the conduct prohbited. 413 U.S. at 608, 37 L.Ed.2d at 837. The Court in Arnett v. Kennedy was unconvinced by the argument that dismissal of government employees for "such cause as will promote the efficiency of the service" was unconstitutionally vague, because it rested upon long-standing principles of employer-employee relationships and the government had provided regulations interpreting the Act. The Court did not consider the vagueness problem presented by its narrowing construction of the statute to avoid overbreadth difficulties.

Lastly, the Supreme Court in Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., supra, held that a municipal ordinance which required a business to obtain a license if it sold items "designed or marketed for use with illegal cannabis or drugs" was not impermissibly vague on its face. Holding that the degree of vagueness tolerated by the Constitution depends in part on the nature of the enactment, subjecting economic regulation to a less strict vagueness test but applying a more stringent vagueness test where a law interferes with the rights of free speech or of association, the Court found that the terms "designed for use" and "marketed for use" in the statute were sufficient to give a business person of ordinary intelligence understanding of the types of business regulated.

The Court's rule in Arnett v. Kennedy, in a plurality opinion written by Justice Rehnquist, the reasoning of which was approved by Justice Powell, avoids the overbreadth problem of a statute by construing it to exclude all constitutionally protected activity. As Professor Tribe has observed, however, this solution merely "exchanges overbreadth for vagueness." Tribe, supra, at 716. The lines between conduct or activity protected by the First Amendment and that not so protected are difficult to draw and oftentimes very obscure. As we have seen, a determination of whether certain behavior is protected by the First Amendment often requires a lengthy and detailed examination of applicable case law and the relevant facts. Any construction of § 4943 to exclude conduct protected by the First Amendment will not give a person of ordinary intelligence sufficient notice of the types of businesses affected by § 4943 or of those businesses which a foundation may continue to own and operate without risk of imposition of the § 4943 penalty tax. Many foundations will be deterred from engaging in activities presenting First Amendment overtones for fear that a court would find them to lie within the zone of regulated business rather than outside it. As Professor Tribe noted, "the Constitution does not, in and of itself, provide a bright enough line to guide primary conduct, and . . . a law whose reach into protected spheres is limited only by the background assurance that unconstitutional applications will eventually be set aside is a law that will deter too much that is in fact protected." Tribe, supra, at 716. These arguments provide strong support for the position that § 4943 can not be narrowly construed to exclude constitutionally protected activities from its scope in order to avoid the overbreadth challenge, and that the Court should decline to do so.

V. THE FIFTH AMENDMENT: THE EQUAL PROTECTION COMPONENT OF THE DUE PROCESS CLAUSE.

A. The Equal Protection Component of the Due Process Clause of the Fifth Amendment.

Classifications drawn in state statutes must withstand judicial scrutiny under the mandate of the Fourteenth Amendment that no state shall deny any person "the equal protection of the laws." U.S. Const. Amend. XIV, § 1. Although the Fifth Amendment, which applies to the federal government, contains no specific equal protection clause, it does forbid discrimination that is "so unjustifiable as to be violative of due process." Bolling v. Sharpe, 347 U.S. 497, 499, 98 L.Ed. 884, 886 (1954). Fifth Amendment equal protection claims are cognizable under its due process clause. Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 75 n.1, 51 L.Ed.2d 173, 178 n.1 (1977); *Schneider v. Rusk*, 377 U.S. 163, 168, 12 L.Ed.2d 218, 222 (1964). The equal protection analysis of actions by the federal government under the Fifth Amendment is the same as that given state actions under the Fourteenth Amendment. *Buckley v. Valeo*, *supra*, 424 U.S. at 93, 46 L.Ed.2d at 730. *See also Rostker v. Goldberg*, 453 U.S. 57, 62 n.3, 69 L.Ed.2d 478, 484 n.3 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 173 n.8, 66 L.Ed.2d 368, 375 n.8 (1980); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 103, 48 L.Ed.2d 495, 508 (1976); *Schlesinger v. Ballard*, 419 U.S. 498, 500 n.3, 42 L.Ed.2d 610, 613 n.3 (1975).

B. *Equal Protection Analysis - In General*.

To decide whether a law contravenes the principles of equal protection, the Supreme Court will examine:

> (1) the character of the classification in question;
> (2) the individual interests affected by the classification; and
>
> (3) the governmental interests asserted in support of the classification.

The level of judicial scrutiny depends upon the interest affected by the law or the classification made in the law. *Dunn v. Blumstein*, 405 U.S. 330, 335, 31 L.Ed.2d 274, 280 (1972).

If the statute or other governmental act in question does not contain a classification drawn along suspect lines, such as race, national origin or alienage, and does not restrict or regulate a "fundamental interest," such as the right to vote, the right to travel interstate, the right to privacy, or the rights protected by the First Amendment, the Court proceeds pursuant to a rational basis test. *Schweiker v. Wilson*, 450 U.S. 221, 67 L.Ed.2d 186 (1981); *Harris v. McRae*, 448 U.S. 297, 65 L.Ed.2d 784 (1980); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36 L.Ed.2d 16 (1973). Such a law is presumptively valid and the burden is upon the party challenging the statute to show it to be otherwise. Classifications made in these laws, treating certain groups differently from others, "'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" *Reed v. Reed*, 404 U.S. 71, 76, 30 L.Ed.2d 225, 229 (1971), quoting *Royster Guano Company v. Virginia*, 253 U.S. 412, 415, 64 L.Ed. 989, 990 (1920). The Court will examine the scheme established by the statute to determine whether it rationally furthers some legitimate, articulated state purpose. This is a fairly low level of judicial scrutiny, and the validity of the classification will be sustained unless it rests upon grounds "wholly irrelevant to the achievement of any legitimate governmental objective." *Harris v. McRae*, *supra*, 448 U.S. at

322, 65 L.Ed.2d at 808. See also Minnesota v. Clover Leaf Creamery Company, 449 U.S. 456, 66 L.Ed.2d 659 (1981); Cleland v. National College of Business, 435 U.S. 213, 55 L.Ed.2d 225 (1978); Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 49 L.Ed.2d 520 (1976).

On the other hand, if the statute in question revolves around a suspect classification, or the distinctions in the statute impinge upon a fundamental interest, the presumption of validity disappears. Rather, the government bears a "heavy burden of justification," and must demonstrate that the classification is necessary to promote a compelling governmental interest. Such statutes will be closely scrutinized in light of their asserted purposes and must be precisely tailored narrowly to serve compelling governmental needs. Buckley v. Valeo, supra, 424 U.S. at 94, 46 L.Ed.2d at 730; San Antonio Independent School District v. Rodriguez, supra, 411 U.S. at 16-17, 36 L.Ed.2d at 33; Dunn v. Blumstein, supra, 405 U.S. at 342-43, 31 L.Ed.2d at 284-85.

Taxing statutes are analyzed according to this generally two-tiered equal protection test. "Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the [government has] large leeway in making classifications and drawing lines which in [its] judgment produce reasonable systems of taxation." Lehnhausen v. Lake Shore Auto Parts Company, 410 U.S. 356, 359, 35 L.Ed.2d 351, 354-55 (1973) (Court upheld a state constitutional amendment which prohibited taxation of the personal property of individuals, but allowed such taxes on corporations and other entities, on the ground that the enactment was rationally related to the state's interest in avoiding the administrative problems associated with such taxes on individuals). State legislatures and Congress have wide discretion in the laying of their taxes, may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products, so long as the classifications bear a rational relationship to a legitimate state interest and do not trench upon other rights guaranteed by the Constitution. Allied Stores of Ohio v. Bowers, 358 U.S. 522, 3 L.Ed.2d 480 (1959) (Court upheld a state statute which exempted from ad valorem taxation merchandise or agricultural products belonging to a non-resident if held in a storage warehouse for storage only, rejecting a claim of improper discrimination against residents of the state). See also Western and Southern Life Insurance Company v. State Board of Equalization of California, 451 U.S. 648, 68 L.Ed.2d 514 (1981) (Court sustained over equal protection challenge a state statute which imposed a retaliatory tax on out-of-state insurers doing business in

California, when the insurer's state of incorporation imposed higher taxes on California insurers doing business in that state than California would otherwise impose on that state's insurers doing business in California); Kahn v. Shevin, 416 U.S. 351, 40 L.Ed.2d 189 (1974) (Court rejected an equal protection challenge to a state statute which granted a property tax exemption for widows, but not for widowers, on the ground that it was reasonably designed to further the state policy of easing the financial impact of spousal loss upon the sex for which that loss imposes a disproportionately heavy burden, finding no suspect classification).

Where a tax measure, however, rests upon a suspect classification or restricts a fundamental interest, it must face the strict scrutiny of the compelling interest test. The First Amendment freedoms of speech and press are "fundamental interests," and tax provisions which burden the exercise of these rights must be necessary to promote a compelling governmental interest. Grosjean v. American Press Company, supra; Taxation With Representation of Washington v. Regan, supra. See also Carey v. Brown, 447 U.S. 455, 65 L.Ed.2d 263 (1980); Police Department v. Mosley, supra; Schneider v. Irvington, supra. Cf. Hart Book Stores, Inc. v. Edmisten, supra (compelling interest test applies where a classification and unequal regulation directly burdens fundamental rights such as First Amendment interests, but the rational basis test governs where a statute has only an incidental effect on protected expression).

C. Strict Scrutiny Analysis of § 4943.

Section 4943 draws obvious distinctions. It applies a penalty tax to private foundations operating a functionally unrelated business enterprise for profit. It does not apply to private foundations operating a functionally related business for profit, those operating an unrelated trade or business without any profit or income motive, private foundations operating a trade or business at least 95 percent of the gross income of which is derived from passive sources, and those trades or businesses conducted by organizations excluded by the Code's definition of "private foundation" and those operated by all other taxable organizations. Also excluded from the § 4943 penalty tax are all other organizations exempt from taxation pursuant to § 501(a) and 501(c). This differential treatment accorded private foundations conducting unrelated business enterprise for profit does not depend upon any suspect classification. The benefit withheld from private foundations by the classification, however, must also be examined. See Dunn v. Blumstein, supra, 405 U.S. at 355, 31 L.Ed.2d at 280. As applied to the Endowment, the statute denies to it the First Amendment right to own, operate and publish the Houston Chronicle, or any newspaper or other First Amendment activity in the form of a business enterprise. Because of this infringement on First Amendment freedoms, § 4943 must withstand the strict scrutiny of the compelling interest test to survive an equal protection challenge.

Under this test, it is not sufficient merely for the government to show that the classifications further a very substantial state interest. In pursuing that interest, Congress "cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with 'precision,' . . . and must be 'tailored' to serve their legitimate objectives." Moreover, "if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a [government] may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.'" Dunn v. Blumstein, supra, 405 U.S. at 343, 31 L.Ed.2d at 285.

The Supreme Court has indicated its opposition to governmental actions which discriminate among various groups in the exercise of their First Amendment freedoms. The Court, in Police Department v. Mosley, supra, invalidated on First

Amendment grounds a municipal ordinance which prohibited picketing near schools, except for the peaceful picketing of any school involved in a labor dispute. That case presented the First Amendment question in its most obvious form, because the ordinance discriminated among various speakers on the basis of the content of their expression. Such a selective exclusion from a public forum could not be tolerated, held the Court:

> Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities. There is an "equality of status in the field of ideas," and government must afford all points of view an equal opportunity to be heard.

408 U.S. at 96, 33 L.Ed.2d at 217. Similar concerns prompted the disapproval in Carey v. Brown, supra, of a state statute that prohibited all picketing of residences or dwellings but allowed peaceful picketing of a place of employment involved in a labor dispute. The Court concluded that the state's professed interest in preserving residential privacy could not justify the unequal treatment afforded First Amendment activities by the statute.

In large part, the equal protection analysis of the restrictions upon First Amendment rights imposed by § 4943 upon private foundations but not upon other entities, and the discriminatory efforts to enhance the competitive vitality of newspapers and other First Amendment businesses operated by taxable entities at the expense of those held by foundations, parallels the First Amendment analysis above. Section 4943 in this sense operates at the intersection of First Amendment and equal protection concerns. Such governmental objectives of equalizing the relative strengths of these groups, or singling out foundation-held businesses for adverse treatment in order to immunize businesses owned by other concerns from competition should not be seen as legitimate governmental interests, much less compelling interests. Previous discussions on the overinclusive and underinclusive nature of § 4943 relative to the Congressional purposes underlying the statute, and of the less restrictive alternatives available to Congress belie any argument that the § 4943 prohibition is necessary to achieve the Congressional purposes underlying that statute. Again, the application of § 4943 to the Endowment presents this differential treatment in its most aggregious form, for Congress had the Endowment specifically in mind when it enacted § 4943 and singled it out for more stringent treatment than its competitors.

An obvious distinction drawn by § 4943, and one example of its underinclusive nature, is its failure to extend its strictures to those business enterprises owned and operated by organizations exempt from taxation under § 501(a) and 501(c) other than private foundations. The Introductory Statement to the 1965 Treasury Department Report noted that the "restriction of the Report to private foundations does not indicate any judgment upon whether or not similar or other types of problems may exist among other classes of exempt organizations."

The Constitution does not require Congress to detect and correct abuses in all related programs before acting to combat those experienced in one. Legislative reform may "take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. . . . The legislature may select one phase of one field and apply a remedy there, neglecting the others." Williamson v. Lee Optical, 348 U.S. 483, 489, 99 L.Ed. 563, 573 (1955). See also Cleland v. National College of Business, supra; Buckley v. Valeo, supra. Where the statute impinges upon First Amendment rights, however, there must be some compelling justification for the course of action chosen by Congress. The legislative history of § 4943 reveals no reason for Congress to focus upon businesses held by private foundations rather than those held by other exempt organizations. Nor does this history establish whether the problems of aggressive competition, self-dealing, accumulation of earnings and maintenance of control of family businesses were more acute with private foundations than with, for example, labor organizations, fraternal associations, or veterans organizations. In fact, there is no indication that Congress made any determination that private foundation involvement in business was more "acute to the legislative mind" than the business activities of other organizations exempt from taxation under 501(c), or that such a comparison was even attempted.

The Court of Appeals for the District of Columbia Circuit in Taxation With Representation v. Reagan, supra, applying a strict scrutiny test, concluded that the differential treatment of lobbying activities by tax-exempt groups in § 501(c) was not supported by any substantial purpose and therefore constituted a denial of equal protection. The court of appeals rejected the government's argument that the § 501(c)(3) restrictions on lobbying were necessary to maintain governmental neutrality with respect to these activities, for the government had already abandoned such neutrality by allowing deduction of lobbying expenses under § 162(e). The second interest advanced by the government in support of the statute, the prevention of abuse of charitable lobbying by private interests, was also found to be insubstantial, since there was no evidence that the lobbying of veterans organizations was less subject to abuse by private interests than that of other § 501(c) groups. Lastly, the government attempted to justify the statute on the grounds that it was necessary to preserve a balance between the lobbying activities of charitable organizations and those of other groups. The court of appeals properly saw this purpose as constitutionally illegitimate, since it was an attempt to suppress speech to give one side of a public question an advantage in expressing its views to the people. This amounted to the type of restriction of the speech of one element of society to enhance the relative voice of another proscribed by the Court in First National Bank of Boston v. Bellotti and Buckley v. Valeo. The same illegitimate purpose lay behind § 4943.

The Supreme Court refused to apply this strict scrutiny analysis in Taxation With Representation because of its conclusion that Congress had not "violated TWR's First Amendment rights by declining to subsidize its First Amendment activities." 51 U.S.L.W. at 4585. Rejecting the suggestion it perceived in the court of appeals' opinion that "strict scrutiny applies whenever Congress subsidizes some speech, but not all speech," the Court concluded that the "issue in this case is not whether TWR must be permitted to lobby, but whether Congress is required to provide it with public money with which to lobby." Id. at 4586. Applying the mere rationality test in lieu of the strict scrutiny analysis, the Court found it was not irrational for Congress to decide to refuse to subsidize lobbying activities of § 501(c)(3) organizations but to allow substantial lobbying by other tax-exempt organizations, such as veterans groups exempted from taxation by § 501(c)(19). In contrast, the issue generated by § 4943 is whether the Endowment will be permitted to exercise its First Amendment right to own and publish the Houston Chronicle, and not whether Congress is required to subsidize the operations of the newspaper. The absolute denial to the Endowment of this First Amendment right must be examined under the demanding analysis of the strict scrutiny test. Since there appears to be no compelling justification for the prohibition on such First Amendment activity by a private foundation while leaving unaffected other tax-exempt organizations, § 4943 does not survive this exacting scrutiny.

Accordingly, because of the discriminatory treatment inherent in § 4943, its overinclusive and underinclusive nature, and the availability of less restrictive alternatives to further the governmental interests at stake, the restriction imposed upon the First Amendment rights of the Endowment by § 4943 deny it the equal protection of the laws in violation of the Fifth Amendment.

VI. CONCLUSION

Examination of the penalty tax imposed by § 4943 upon the Endowment's continued ownership of the Houston Chronicle reveals that this application of the statute contravenes the First Amendment freedoms of speech and press and denies the Endowment the equal protection of the laws in violation of the due process clause of the Fifth Amendment. The congressional desire to enhance the competitive vitality of the First Amendment business of taxable organizations by preventing such activities by private foundations is an impermissible purpose. Nor can the other goals behind the statute cure this constitutional defect, for less restrictive alternatives are available to achieve those objectives. The Treasury Department and Congress specifically singled out the Endowment for disfavored treatment and its competitors for a favored position. Any application of § 4943 to a foundation conducting any First Amendment activity as a business enterprise, whether it be a radio or television station, bookstore, movie theater, newspaper, magazine or other periodical or publication, suffers the same constitutional infirmities and any such application will be subject to challenge for the same reasons. Moreover, powerful arguments can be made as to the facial invalidity of § 4943 on overbreadth grounds. The traditional role of a free press in a democratic society, and the protection afforded such freedoms by the First Amendment, demand that Congress be denied this expansive power to strip the Endowment of its First Amendment right to own and operate the Houston Chronicle.

Chairman Rangel. Before I call the next witness, I'd like to know, counsel, do the same people run the newspaper that run the foundation?

Mr. Zivley. The officers of the foundation and the newspaper are not the same. In fact, I believe there is only one person who is an officer of the newspaper that serves on the board of the foundation.

Chairman Rangel. Mr. Avery of the Day Trust.

STATEMENT OF DEANE C. AVERY, COPUBLISHER OF THE NEW LONDON (CONN.) DAY, AND TRUSTEE OF THE DAY TRUST

Mr. Avery. Mr. Chairman, members of the subcommittee, I am Deane Avery, copublisher and editor of the New London Day, an independent newspaper published in New London, Conn., with a daily circulation of 39,000.

I guess you could call me a country editor.

As I sit here wide-eyed in these opulent surroundings, I am reminded the last time I was here was in my senior high school year when the class made the trip. So this is all new to me.

I am here today to ask your help in keeping the Day out of the grasp of the newspaper chains. I ask this not for any selfish reason. I am at an age where I probably would benefit were the paper to be sold to a chain. Chances are the buyer would give me 2 years' salary and tell me to retire early, which would be fine with me.

I am making this appeal in behalf of the residents of southeastern Connecticut who are the beneficiaries of what I think is a first-class, independent newspaper.

The Day is unique. Its owner and publisher, Theodore Bodenwein, who died in 1939, purchased the paper in 1891 when it was 10 years old. It was a small, marginal operation. With the support of subscribers and advertisers, he made the paper a success both journalistically and financially.

Because Mr. Bodenwein, the son of a German immigrant bootmaker, started with virtually nothing, he appreciated the support given him by readers and merchants, and he felt a deep debt of gratitude to the New London community.

In his will, which he wrote in 1938, Mr. Bodenwein created a unique two-trust arrangement as evidence of that gratitude.

The first trust, the Day Trust, was created to allow the trustee to manage the Day as an independent, locally owned newspaper in the special, civic-minded manner specified by Mr. Bodenwein.

Any net income of the Day Trust not needed for those purposes is to be paid over to the second trust, the Bodenwein Public Benevolent Foundation, which has an entirely separate trustee and which until 1978 was held to benefit both members of Mr. Bodenwein's immediate family and local public and charitable purposes.

Over the past 10 years the trust, through profits earned by the Day, has distributed between $130,000 and $200,000 annually to the foundation.

In 1978, Mr. Bodenwein's last heir died. Pursuant to the provisions of the will, upon her death all the net income and principal of the foundation became thereafter payable exclusively for public and charitable purposes.

The foundation accordingly became subject to the private foundation restrictions.

A major problem has arisen, however, because the Internal Revenue Service ruled that the trust, as well as the foundation, had become subject to the private foundation restrictions, even though no change in the administration of the trust had occurred.

While the trust can readily abide by all of the other private foundation restrictions, the application to the trust of the excess business holdings restriction of section 4943 of the code and the minimum distribution restriction of section 4942 of the code will destroy the beneficial and unique arrangement established by Mr. Bodenwein's will.

Both sections will require the trust to sell the Day.

The will specifically prohibits the trustees from selling the Day. Moreover, as a practical matter, the sale would most likely be to a national publishing chain, just what Mr. Bodenwein was seeking to avoid when he created the trust over 40 years ago.

Upon the sale of the Day, the trust will have to be finally and irrevocably liquidated.

Because the Day trust cannot live under the two private foundation restrictions in question, it is asking Congress to consider legislation that would exempt it from those private foundation provisions.

To do so would insure that the New London community will always be served by a quality, independent newspaper.

Because the Day has no owner in the traditional sense—its stock being owned by the trust—there would never be an unwarranted incentive to sell. What a marvelous position for a newspaper and the community it serves to be in.

It is my belief that the private foundation restrictions were intended to cover a situation such as that presented by the Day.

Theodore Bodenwein never created his two-trust arrangement to dodge taxes or to take unfair advantage of a situation. The Day as a company pays every tax, both Federal, State, and local, that any other company pays. His motives were as pure as the driven snow, to keep the paper independently owned and to benefit community organizations through his two-trust arrangement.

Mr. Bodenwein had an understandably strong felling toward his newspaper. He said in his will that he wanted the Day to be more than a business enterprise.

He said the Day should always be the champion and protector of the public interest and the defender of the peoples' rights.

The publishers who have followed him have tried to carry out that charge.

If the Day is sold to a national chain, another independent newspaper will be lost forever. The seriousness of that eventuality is underscored by a couple of statistics. In 1910 there were 2,149 independent daily newspapers in the United States. By 1980, that number had dwindled to 609, and the trend continues unabated. By June 1, 1983, the number was down to 534.

It is important to maintain a diversity of newspaper opinion and commentary in our country.

The prepared statement previously filed with the subcommittee by the Day trust fully discusses several important considerations which point up the appropriateness of granting the trust legislative relief.

For example, the abuses which the rules of sections 4943 and 4942 were designed to prevent simply do not exist in the situation of the trust.

In addition, the application of the private foundation restrictions to force the sale of the Day would raise serious questions as to whether such action violates either or both the first and fifth amendments to the U.S. Constitution. These and other considerations are dealt with fully in our prepared statement.

In sum, Mr. Chairman, we strongly believe that any considerations in favor of enforcing rigidly the private foundation restrictions against the trust which will force the trust to sell the Day are clearly outweighed by other considerations which favor preserving the trust. These considerations include the public policy in favor of preservation of small, independent newspapers.

The trustees of the trust accordingly urge enactment of the provisions of H.R. 1649, sponsored by every member of the Connecticut delegation. Of course, the trust would also support a more broadly based bill which would accomplish the same results for the trust.

Mr. Chairman, on behalf of the trustees, the employees of the Day, and the entire New London community, we thank you for this opportunity to present our views.

[The prepared statement follows:]

STATEMENT OF DEANE AVERY, COPUBLISHER, THE NEW LONDON DAY, NEW LONDON, CONN., AND TRUSTEE OF THE DAY TRUST

Introduction

Mr. Chairman and Members of the Subcommittee, my name is Deane Avery. I am publisher of The New London Day, an independent daily newspaper with circulation in the greater New London, Connecticut, area. I am also a Trustee of The Day Trust, a testamentary trust established by the Last Will and Testament of Theodore Bodenwein, who died on January 12, 1939. The Trust holds essentially all of the stock of The Day Publishing Company, which publishes The Day. Such stock constitutes the sole asset of the Trust.

My purpose in presenting this testimony is to demonstrate that the application of two of the private foundation restrictions - the restrictions of Sections 4943 and 4942 of the Internal Revenue Code - would require the Trust to sell The Day in direct contravention of the purposes and provisions of Bodenwein's bequest. No policy interests would be served by applying these two private foundation restrictions to the unique situation of the Trust. Ownership of The Day is essential to the fulfillment of the purposes of the Trust, and the required divestiture of The Day would result in the complete and final destruction of the Trust, which would have to be liquidated following the sale. The Trust does not represent a situation in which any significant abuse which the

Section 4943 and 4942 restrictions were intended to curb is now or may in the future be present.

Further, I shall attempt to convince the Subcommittee that the forced sale of The Day would raise serious Constitutional questions under both the First and the Fifth Amendments. Moreover, if the Trust must sell The Day, it undoubtedly would sell the newspaper to a national or regional publishing chain. Newspaper chains are rapidly expanding. Chains now print approximately 70 percent of the daily newspapers sold in the United States, and only about 600 independent newspapers remain. It has been estimated that by the year 2000 all dailies in the United States will be published by fewer than two dozen chains. There is a very significant public policy in favor of taking appropriate steps to help preserve local ownership of the remaining independent newspapers. Chains are remote from and unresponsive to the local constituencies which depend on them. They have an enormous power to manipulate popular opinion and change the course of events. It is important to maintain the existence of independent voices.

In sum, I hope to establish that not only would the application of the Section 4943 and 4942 restrictions to the Trust serve no legitimate policy interest, but also there are important policy reasons for not applying those restrictions to the Trust. Thus the Subcommittee should support the provisions of H.R. 1649, which would exempt the Trust from the application of those restrictions.

The Day and The Day Trust

For over a century The Day has played an important role in the growth and development of southeastern Connecticut. The Day is a highly successful and respected newspaper that is acclaimed both for its journalistic achievements and for its contributions to the greater New London community.

The success of The Day can be largely attributed to Bodenwein. Bodenwein purchased The Day in 1891 and devoted much of his lifetime to managing the newspaper. From the beginning, his goal was to make The Day a recognized institution in the community and a leading factor in the growth, development and improvement of New London and southeastern Connecticut. Bodenwein was a public-spirited publisher who devoted much of his time and effort to fostering the relationships between The Day and the local community and between The Day and its employees. He recognized that the success of The Day was critically dependent upon the continued confidence and support of both groups.

Bodenwein wanted to keep The Day among the foremost newspapers in every respect. A keen and critical reader of The Day, he strived for excellence in reporting. He sought experienced help and tried to keep workers content in their services through liberal compensation and favorable working conditions. Under Bodenwein's tutelage, The Day's circulation more than quintupled and, as the newspaper grew, so did its contributions to and participation in the community. The Day's headline on its 50th anniversary in 1931 proudly proclaimed, "Half a century of outstanding newspaper achievement; The Day becomes an acknowledged institution; devotion to public weal has won it powerful support."

During Bodenwein's lifetime, he expressed his "earnest hope [that] The Day, unlike us poor mortals, will be able to go on forever." The Day, (1916). However, the state of the publishing world in the 1930s when Bodenwein wrote his Will did not augur well for the continued independent status of The Day, for that world had already become increasingly inhabited by national and regional publishing chains that grew larger by acquiring small, local newspapers. Moreover, the newspaper consolidations of the 1930s often had resulted in a retreat by the formerly local newspapers from the type of public service and quality exemplified by The Day to an emphasis on profits alone. See, e.g., F. L. Mott, American Journalism 644 (3d ed. 1962).

Bodenwein's Will reflected his desire that after his death The Day continue to be more than an ordinary business enterprise. It recites Bodenwein's belief that The Day should be the "champion and protector of the public interest and the defender of the people's rights." And to ensure the continued local and independent operation of his newspaper against the increasing threat of consolidation, Bodenwein established in his Will a unique two-trust arrangement.

First, Bodenwein created the Trust to hold the stock of the Publishing Company. The focus and purpose of the Trust is expressly stated in the Will to be the continuation and management of The Day so as to accomplish Bodenwein's desire that The Day be more than an ordinary business enterprise and be instead "a leading factor in the growth, development, and improvement of the city [New London] and vicinity and the happiness and prosperity of the people." Bodenwein thereafter directed that any excess net income not needed by The Day to accomplish his aims was to be paid by the Trustees to the Bodenwein Public Benevolent Foundation (hereinafter the "Foundation"), an entirely separate organization having an entirely different trustee created by the Will. The Foundation was then to distribute such excess net income to members of Bodenwein's immediate family during their lives and to local public and charitable organizations.

The Trustees of the Trust, two of whom must be exclusively employed in publishing The Day, are explicitly directed by the

Will to manage The Day in the same manner and tradition and with the same attention to high standards and quality as had been established under Bodenwein's ownership. The Trustees, for example, are directed "to provide liberal compensation and various forms of assistance and rewards, such as insurance, bonuses, and pensions, to its employees; to pay sufficient salaries to assure a high type of executives and skilled writers and workmen; to make provision for providing in the course of time a new building to house the paper and such other tenants as they consider it desirable to provide space for, such building to be distinctive in character, a credit to the City architecturally, and an evidence of a farsighted policy; to constantly improve and maintain the mechanical plant used for publishing the paper; to maintain reasonable reserves for all of the above and for unforeseen contingencies, including taxes."

In his Will, Bodenwein did not provide for any partial sale of the Publishing Company's stock. A complete sale is contemplated only under extreme circumstances. The Will provides that the Trust shall terminate only if The Day is no longer published in New London or if the Trust fails in each of any two successive years to distribute $25,000 to the Foundation. Upon the Trust's termination, all Trust assets are to be liquidated and distributed to the Foundation.

Upon Bodenwein's death in 1939, essentially all of the shares of stock of the Publishing Company were transferred to the Trust. The original Trustees consisted of the directors of the Publishing Company. Since that time, with but one exception, the Trustees have always served as members of the Board of Directors of the Publishing Company during their tenure as Trustees. By contrast to the Trustees, whose expertise is in newspaper publishing and business, the Distributing Committee of the Foundation is comprised of individuals chosen for their past involvement and interest in local charities.

The Will makes no direction that members of Bodenwein's family run or be involved with the newspaper, be members of the Board of Directors of the Publishing Company or be Trustees, although the Will does state "that at some future date" the talents of Bodenwein's son, Gordon, might justify his being employed as publisher of The Day and appointed as a Trustee. The only members of the Bodenwein family that have been involved in either the Trust or The Day since Bodenwein's death are Gordon Bodenwein and Bodenwein's daughter, Elizabeth B. Miles. However, apparently neither child shared their father's interest in the newspaper. Gordon Bodenwein was employed by The Day as an editorial writer in the 1940s, but resigned from The Day in 1950. He was made a director of the Publishing

Company and a Trustee in 1942, but because of disputes with the other directors and trustees he was not re-elected as a director in 1951. He remained a Trustee until his death in 1967. Elizabeth B. Miles became a director in 1967 and a Trustee in April of 1978, positions which she held until she died in November of 1978. Elizabeth B. Miles was never employed by the Publishing Company. Neither Gordon Bodenwein nor Elizabeth B. Miles had any children. Clearly Bodenwein did not in any sense create the Trust as a means of perpetuating control of The Day by members of his family.

Southeastern Connecticut has benefited greatly from the unique scheme established by Bodenwein's Will. For over forty years the Trust has operated as Bodenwein had planned. It has provided the New London area with a superior daily newspaper that is locally owned and operated. And it has provided any excess funds not needed by The Day to the Foundation for its gifts to local charities and governmental bodies. Over the past ten years, the Trust, through profits earned solely by The Day, has distributed between $130,000 to $150,000 each year to the Foundation.

Many years have passed since Bodenwein expressed his concern about the future of The Day and his hopes for its continuance. The Day has not only survived as an independent newspaper, but also, under the management of the Trustees, it has experienced continued growth. For example, the following are comparative figures on The Day's growth, taken at its inception, and at the half, three-quarter and century marks:

	1881	1930	1955	1981
Circulation	1,000	14,386	24,300	35,830
Gross Yearly Business	$15,000	$350,308	$1,174,305	$9,149,064
Average Number Pages	4	18	24	46
Annual Newsprint Consumption	31 tons	611 tons	1,304 tons	2,922 tons
Number Full-Time Employees	14	52	101	181
Annual Payroll	$10,930	$101,504	$511,783	$4,013,989

The Trustees have been mindful of their responsibility to manage The Day so as to accomplish Bodenwein's aims and accordingly have been and are active participants in the management of The Day. Their monthly meetings are devoted almost entirely to discussions of matters concerning The Day, from personnel to capital expenditures to editorial policies.

The Trustees also have been mindful of Bodenwein's concern for the well-being of The Day's employees. As a result, the compensation and fringe benefits provided to employees of The Day are among the highest in the industry, taking into account the circulation of the newspaper and its location in New London, Connecticut.

The Day's offices are located in the heart of downtown New London, an area that once suffered from urban blight and decay. As Bodenwein expected, though, The Day has been a leader in the revitalization and rehabilitation of the downtown area. The newspaper's building has consistently been maintained in top shape and its premises have been landscaped with trees and shrubs to enhance its appearance. Recently, for example, the third floor of the newspaper's main building was renovated. The third floor contains meeting rooms, a lunchroom, and an auditorium, all of which are available for public use, generally at no charge. Several community organizations regularly use this space. In addition, The Day sponsors workshops and conferences on issues of interest to the local community, and also uses these new facilities for such community conferences.

On November 20, 1978, Elizabeth B. Miles, the last survivor of the wife and two children of Bodenwein, died. Pursuant to the provisions of the Will, upon her death all the net income and principal of the Foundation became thereafter payable exclusively for public, religious, charitable, scientific or educational purposes. The Foundation upon the death of Elizabeth B. Miles accordingly became subject to the private foundation restrictions. Thus the Foundation is now and will remain subject to all of the restrictions imposed upon private foundations, including those imposed by Sections 4940 through 4946 of the Internal Revenue Code. No one questions the appropriateness of the application of the private foundation restrictions to the Foundation.

A major problem has arisen, however, because the Internal Revenue Service has ruled that the Trust as well as the Foundation became subject to the private foundation restrictions upon the death of Elizabeth B. Miles, even though no change in the administration of the Trust had occurred following her death. The application of two of the private foundation restrictions - the excess business holdings restriction of Section 4943 of the Code and the minimum distribution restriction of Section 4942 of the Code - to the Trust will destroy the beneficial and unique scheme established by Bodenwein's Will. Section 4943 will flatly prohibit the Trust from continuing to own essentially all of the stock of the Publishing Company, or even a controlling interest. As is explained in greater detail below, Section 4942 will require the Trust each year to make distributions to the Foundation which are likely to exceed the net income of the Trust. Because the corpus of the Trust consists solely of the Publishing Company stock, this will mean that the Trustees of the Trust would either have to sell or distribute the stock to satisfy the minimum distribution requirement. The Will does not allow the Trustees to do either. Since compliance with these two private foundation restrictions would necessarily violate the express terms of Bodenwein's Will, their practical effect will be to require the sale of The Day, most likely to a regional or national publishing chain, just what Bodenwein was seeking to avoid when he created the Trust over forty years ago. We believe that there is no sufficient justification for destroying an arrangement that has served the New London community so well for so long and that it is appropriate to exempt the Trust from the excess business holdings and minimum distribution restrictions by legislation. Thus the Trust urges favorable consideration of the provisions of H.R. 1649, which effectively exempts the Trust from these restrictions. Of course, the Trust also would be supportive of a more broadly applicable bill which would accomplish the same results for the Trust.

The Trust Does Not Significantly Involve Any of the Abuses which the Private Foundation Restrictions Were Intended to Prevent.

As is indicated above, the Trust can readily abide by all of the private foundation restrictions with two critical exceptions, the excess business holdings and the minimum distribution restrictions. A detailed examination of those two restrictions reveals that in the case of the Trust there have not been, and there are not likely to be, any significant abuses of the type that those restrictions were intended to prevent.

First and foremost, the application of the excess business holdings restriction will totally destroy the Trust by prohibiting it from continuing to own essentially all of the stock of the Publishing Company, or even a controlling interest. The excess business holdings restriction was created by Congress in 1969, fully 30 years after the date of Bodenwein's death, in order to prevent three basic "undesirable results" perceived to flow from the operation of commercial ventures by private foundations from continuing. The excess business holdings restriction was intended (i) to prevent the use of private foundations to maintain family control of businesses, (ii) to restrict private foundations to the purposes for which they were formed and to avoid the temptation of private foundation managers to become so involved in the business that they fail to pay attention to their charitable duties, and (iii) to avoid unfair competition which might arise if the business owned by a private foundation were in competition with a business owned by owners who are taxable on their income. See the Introductory Statement of the 1965 United States Treasury Department Report on Private Foundations, pages 30-45, and the committee reports of the House Ways and Means Committee and the Senate Finance Committee on the Tax Reform Act of 1969, H.R. 13270, which enacted § 4943, H.R. Rep. No. 413, 91st Cong., 1st Sess. 27 (1969), 1969 U.S. Code Cong. & Ad. News 1671; S. Rep. No. 552, 91st Cong., 1st Sess. 38 (1969), 1969 U.S. Code Cong. & Ad. News 2066-67.

As is indicated above, the Trust is unquestionably not a device which has been or can be used to maintain control of The Day by members of the Bodenwein family. No lineal descendant of Bodenwein is even living today. In addition the Trust is entirely willing to abide by the private foundation restrictions on self-dealing set forth in Section 4941 of the Code.

Similarly, there is no danger that the Trustees of the Trust will divert their attention from the purposes of the Trust and become so involved in the newspaper that they will fail to pay attention to their charitable duties in contravention of Bodenwein's intent. The unique two-trust arrangement created by Bodenwein by his Will insures that the Trust will not be subject to any such "undesirable result." The Trust and the Foundation are entirely separate entities having entirely separate trustees. The sole focus of the attention of the trustee of the Foundation is and must be on its charitable duties without distraction of direct and full responsibility for running the newspaper. The primary focus of the Trust, on the other hand, is on running the newspaper so as to make it more than a business enterprise. The explicit provisions of the Will make it clear that the running of the newspaper by the Trustees of the Trust is and must be their most important duty. It was never intended that the Trustees of the Trust have substantial charitable responsibilities. Those duties were assigned by Bodenwein to the trustee of the Foundation. Thus it simply cannot be said that there is or can be any possibility that the intent of Bodenwein may be subverted by allowing the Trustees of the Trust to continue to run the newspaper; that is exactly what Bodenwein wanted and intended.

Indeed the unique two-trust arrangement created by Bodenwein points up the unique unfairness inherent in imposing the excess business holdings restriction upon the Trust. In a normal one-trust situation in which one trust owns a business and itself selects charitable organizations to be the recipients of the income generated by that business, it is always at least reasonable to say that the primary intent of the grantor of the trust was to benefit charity. The excess business holdings restriction was intended to further that primary charitable intent of the grantor by curbing certain perceived abuses, and thus it is fair to impose the restriction in the one-trust situation. After the sale of its business interests, the managers of a one-trust private foundation will be able to devote their entire attention to furthering the charitable interests involved and will be able to invest and use the proceeds of the sale in new ways to further such charitable interests, the presumed primary intent of the grantor.

The unique two-trust structure created by Bodenwein was not a situation which Congress ever considered in 1969, and if it had considered the situation it clearly would not have wished to impose the excess business holdings restriction on the Trust. As has already been discussed, while the exclusive purpose of Bodenwein in creating the Foundation was his intent to further his charitable interests, his primary intent in creating the Trust - a separate trust with separate Trustees - was not at all an intent to further charitable interests but was his intent to have The Day continue to be independently and locally owned and operated in the very special manner so carefully specified by Bodenwein in his Will. By forcing the sale of The Day, most likely to a newspaper chain, the application of the excess business holdings restriction to the Trust will utterly and finally destroy the primary purpose which Bodenwein wished to promote when he created the Trust. Such an unintended result is uniquely unfair.

Finally, because the Publishing Company is itself a fully taxable corporation and because the Trust has not received any additional contributions since Bodenwein died in 1939 and will not receive any new contributions in the future, there is no danger that The Day will constitute unfair competition to a competitor simply because it is owned by the Trust. Because the Publishing Company is a fully taxable corporation, The Day like any competitor must finance its operations and support its expansion programs with funds which remain after its taxes have been paid. Because no new contributions have been or will be made to the Trust after 1939, the Trust will not be able to supply capital to The Day unfairly. Thus the specific instances of "undesirable results" arising from the potential threat of unfair competition which Congress was concerned about when it adopted the excess business holdings restriction in 1969 do not and will not exist in the case of the Trust. See the Introductory Statement of the 1965 United States Treasury Department Report on Private Foundations and the 1969 committee reports cited above. In fact, if anything, the Trust is at somewhat of a disadvantage when compared to a privately owned enterprise since by the terms of Bodenwein's Will the Trust must continually make at least minimum distributions to the Foundation in order to remain in existence and must run The Day as more than a business enterprise. A privately held business would be under no similar constraints and could leave all of its funds in the business in a prolonged period of business need. Moreover, in view of the trend toward newspaper consolidation, if The Day were to have a competitor, the competitor would most likely be a major publishing chain which could use its vast size and resources to overcome any competition from The Day.

There is no evidence that The Day has ever gained or attempted to gain any competitive advantage from its or the Foundation's charitable status, and there is no way it could have done so had it attempted. Moreover, there can be no issue of unfair competition in this case because newspapers are by and large natural monopolies, and this is certainly true of The Day. See Editor and Publisher International Yearbook (1980), Rosse and Dertouzos, "Economic Issues in Mass Communications Industries," Proceedings of the Symposium on Media Concentration, Vol. I, Federal Trade Commission, December 1978. Regardless whether The Day exists, there will only be at most one newspaper published in New London. The issue of unfair competition therefore is clearly more applicable to industries where there is or at least can be competition in the local market.

For a variety of reasons it is thus appropriate to grant the Trust exemption from the provisions of Section 4943 by legislation. It is equally necessary and equally appropriate by legislation to grant the Trust exemption from the provisions of Section 4942 of the Code which require a private foundation to distribute each year an amount equal to five percent (5%) of the value of its assets determined each year, even though such amount may be more than the net income of the private foundation. The application of this requirement that a private foundation must distribute annually its "minimum investment return" may well mean that the Trust will have to distribute more than its net income each year, and such distributions would require the distribution or sale of the Publishing Company stock in direct violation of the express terms of Bodenwein's Will. Thus application of this Section 4942 requirement, like the requirements of Section 4943, would necessarily destroy the unique arrangement created by Bodenwein by requiring the sale of The Day, most likely to a publishing chain. As it is appropriate to exempt the Trust from the requirements of Section 4943 in order to preserve Bodenwein's arrangement which has served his community so well for so long, it is equally necessary and appropriate to exempt the Trust from the requirement of Section 4942 that the Trust distribute annually an amount equal to its minimum investment return.

As in the case of Section 4943, exemption of the Trust from the minimum investment return distribution requirement of Section 4942 will not allow the Trust to perpetuate a significant abuse which Section 4942 was intended to prevent. The general purpose of Section 4942, as reflected in the House and Senate Committee reports, is to assure that the purposes of a private foundation are not frustrated by accumulation of income or investment in non-income producing assets to the detriment of active use of the funds for the purposes of the private foundation. H.R. Rep. No. 413, 91st Cong. 1st Sess., reprinted in 1969 U.S. Code Cong. & Ad. News at 1669; S. Rep. No. 552, 91st Cong. 1st Sess., reprinted in 1969 U.S. Code Cong. & Ad. News at 2062. The primary purpose of the Trust is to provide the New London community with a quality newspaper that is more than a business enterprise, and only its secondary purpose is to pay all of the net profits of the newspaper not needed for such primary purpose over to the Foundation each year for distribution in the community for public and charitable purposes. The Trustees of the Trust have no authority to make any accumulations for any other purposes. The provisions of Bodenwein's Will themselves require minimum distributions from the Trust to the Foundation in order for the Trust to be continued. In addition, the inclusion among the Trustees of the Trust of a representative of the Foundation as well as persons independent from the operations of the newspaper serves as a practical constraint on any excessive accumulations for purposes that are not germane to the operation of a quality newspaper and to insure distribution of unneeded net income to the Foundation.

Moreover, the application of the minimum investment return distribution requirement of Section 4942 to the stock of a relatively small, locally owned, independent newspaper is uniquely unfair. Any typical small business which is operated efficiently may have a value roughly equal to eight times its annual earnings. Any typical larger business which is operated efficiently may have a value roughly equal to ten times its annual earnings. The minimum investment return distribution requirement will require a private foundation to pay out more than the current earnings of the business which it owns only in the case of a business which has a value in excess of twenty times its annual earnings. Accordingly, there is no unfairness inherent in the minimum investment return distribution requirement with respect to any "normal" business, because such requirement will require the private foundation to distribute more than the current earnings of the business only if the business is being operated by the private foundation poorly or inefficiently so that its annual net earnings are unnecessarily low.

It is uniquely unfair, however, to apply the minimum investment return distribution requirement to a private foundation which owns a relatively small, locally owned, independent newspaper, at least if comparable sales are to be used to establish the value of the newspaper, because the value of each and every such newspaper based on comparable sales is invariably much greater than twenty times the annual earnings of the newspaper no matter how efficiently the newspaper may be operated. The value of such newspapers based on comparable sales has nothing to do with the efficiency of the operation of the newspaper or similar factors; it is simply the reflection of the easily documented fact that large newspaper chains, for tax and other reasons, have been and continue to be willing to pay huge prices for relatively small, independently owned newspapers, which prices bear no rational relationship of any kind to the annual earnings, actual or potential, of the newspaper.

A 1982 study published by The Rand Corporation prepared for the U.S. Small Business Administration entitled "Newspaper Groups: Economies of Scale, Tax Laws, and Merger Incentives," demonstrates that reported "price-earnings ratios" for relatively small, independent newspapers that had been sold "have been known to climb as high as 60 times annual pre-tax profits." The Rand study concluded that its research "strongly suggests that the growth of newspaper chains is not the result of efficiency gains resulting from conglomeration."

A similar conclusion was reached by Jonathan Marshall, editor and publisher of the Scottsdale (Arizona) Daily Progress. In an article entitled "The Independents' Last

Stand", published in the February, 1981, issue of "The Bulletin of the American Society of Newspaper Editors," Mr. Marshall termed prices being offered by giant newspaper chains for independent newspapers "absurdly high." Mr. Marshall began his article:

> I have a recurring nightmare. There is a tidal wave of newspapers moving toward our plant. The papers have the names of chains - Gannett, Thomson, Cox, Scripps, Knight-Ridder and Pulliam. I stand with a copy of the Bill of Rights in one hand and the Progress in the other, and I vainly try to convince the tidal wave that independent newspapers must survive if our freedoms are to be preserved.

Mr. Marshall concluded his article:

> Some independent papers are creative, courageous and well-produced. Others are drab and poorly edited. But almost all of their editors and publishers care more about their communities than do their counterparts on group properties.
>
> I do not know how independent newspapers (and small chains) can survive more than another two decades in America's climate of "bigness is goodness." If they are to survive, however - and I obviously think they should - Congress will have to find a way to help them finance capital improvements, and the Justice Department will have to find a means of protecting them from neighboring predators.
>
> With absurdly high prices being offered for available properties, selling out becomes all too tempting when the pressures of survival grow too great. Fortunately, there still are many idealistic individuals who believe in free enterprise, local newspapers

> and the cause of freedom. So, some independents will continue the fight for a few more years.
>
> Eventually, however, a few giant chains will control virtually all daily newspapers in the United States. And when that happens, the American people will have lost an essential ingredient of a free press.

There Exist Strong Public Policy and Constitutional Considerations That Weigh Heavily in Favor of Legislative Relief for the Trust.

Mr. Marshall's opinions mirror those of the United States Supreme Court, which cautioned in Miami Herald Pub. Co. v. Tornillo, 418 U.S. 241, 249-50 (1974) that the trend toward newspaper concentration disserves the policies behind the First Amendment:

> Newspapers have become big business and there are far fewer of them to serve a larger literate population. Chains of newspapers, national newspapers, national wire and news services, and one-newspaper towns, are the dominant features of a press that has become non-competitive and enormously powerful and influential in its capacity to manipulate popular opinion and change the course of events.
>
> . . .
>
> The result of these vast changes has been to place in a few hands the power to inform the American people and shape public opinion. Much of the editorial opinion and commentary that is printed is that of syndicated columnists distributed nationwide and, as a result, we are told, on national and world issues there tends to be a

> homogeneity of editorial opinion, commentary, and interpretive analysis. The abuses of bias and manipulative reportage are, likewise, said to be the result of the vast accumulations of unreviewable power in the modern media empires.

The reasons for the concerns of Mr. Marshall and the United States Supreme Court are fully documented in the Rand study. As the study points out, the newspaper industry has faced dramatic changes in its ownership structure during the twentieth century. For example, there were 13 chains owning a total of 62 daily newspapers in 1910; less than three percent of all the dailies in the United States were associated with groups. By 1920, 55 chains owned 311 dailies which had combined circulations amounting to over 43 percent of the total United States circulation. By 1960, fully one-half of all newspapers were owned by chains, and by 1980, 155 chains sold newspapers with circulation totaling over 70 percent of the Unites States total. (See Appendix)

Similarly, the number of independent daily newspapers in the United States has decreased. In 1910, there were 2,140 independent newspapers in the United States. By 1930, only 1,559 remained, and by 1980, there were only 609 independent newspapers in the United States.

In addition to the tendency toward group ownership and the decrease in independent daily newspapers, there exists the even more disturbing decline in independent newspaper "voices." Today, there are fewer than 800 independent daily newspaper voices left in the United States, a 65 percent decline since 1910.

The Washington Post, in its 1977 series on "The Newspaper Business," based on a six-month study on the newspaper industry, pointed out that the remaining independent dailies were being gobbled up at a rate of more than 50 a year. At that rate, the Post went on to predict, "within two decades, virtually all daily newspapers in America will be owned by perhaps fewer than two dozen major communications conglomerates."

The Rand study specifically notes that the growth of newspaper chains has "important policy implications." The Rand study concludes that

> a democratic society depends on a diverse forum for the creation, assimilation, and dissemination of ideas and information. Corporate acquisitions of daily newspaper, weeklies, and cable television franchises continue. If such merger activity is encouraged by tax laws which appear to have little or no economic justification, appropriate government agencies should consider remedial policies.

Congress has previously explicitly recognized the importance of adopting remedial legislation to help preserve the continued existence of locally owned, independent newspapers. The Newspaper Preservation Act, Public Law No. 91-353, enacted July 24, 1970, which provided an exception from the antitrust laws for joint operating arrangements among newspapers, specifically declares that the Act was adopted by Congress "in the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States." As was noted in the legislative history of the Act, the Act sanctioned conduct - - price-fixing, profit pooling, and market allocation - - which are crimes. H.R. No. 91-1193, 91st Cong., 1970 U.S. Code Cong. Ad. News. 3556-3557. In adopting the Act, Congress determined that sufficiently compelling reasons existed in favor of taking action to help preserve locally owned, independent newspapers to justify legitimitizing such criminal conduct.

Another consideration favoring granting legislative relief for the Trust is the fact that the application of the private foundation restrictions to force the sale of the Publishing Company stock by the Trust would raise serious questions as to whether such action violates either or both the First and Fifth Amendments to the United States Constitution.

It is quite possible that the retroactive application of Sections 4943 and 4942 to the Trust would violate the First Amendment, because it would effectively eliminate the Trust's

First Amendment right to own and operate The Day. The First Amendment does protect the right to own, operate, and publish a newspaper, because that right is of fundamental importance to the preservation of the First Amendment guarantees. The general First Amendment guarantees of freedom of the press clearly mandate that Constitutional protection be extended to the right to own and conduct the means of distributing or disseminating expression. See Smith v. California, 361 U.S. 147 (1959) (First Amendment encompasses the freedom to own and operate a bookstore); Chulchian v. Indianapolis 633 F.2d 27 (7th Cir. 1980) (First Amendment encompasses the right to own and operate a movie theater); see, Minneapolis Star & Tribune Co. v. Comm'r of Revenue 51 U.S.L.W. 4315 (March 29, 1983) (use tax on the cost, in excess of $100,000, of paper and ink products consumed in the production of a publication violated First Amendment); Grosjean v. American Press Co., 297 U.S. 233 (1936) (license tax on newspapers violated First Amendment).

Furthermore, it is the position of The Day Trust that the retroactive application of Sections 4943 and 4942 to require the Trust to sell The Day would violate the due process requirements of the Fifth Amendment. Such a forced sale will, of course, signal the complete and final destruction of The Day Trust, which upon the sale will have to be liquidated. The Constitutional issue created thereby is pointed up by the decision of the United States Supreme Court in Welch v. Henry, 305 U.S. 134, 147 (1938), in which the Court discusses several cases in which it had struck down retroactive estate and gift taxes, "on the ground that the nature or amount of the tax could not reasonably have been anticipated by the taxpayer at the time of the particular voluntary act which the statute later made the taxable event. Nichols v. Coolidge, 274 U.S. 531, 542; Untermeyer v. Anderson, 276 U.S. 440, 445 (citing Blodgett v. Holden, 275 U.S. 142, 147); Coolidge v. Long, 282 U.S. 582. Since, in each of these cases, the donor might freely have chosen to give or not to give, the taxation, after the choice was made, of a gift which he might well have refrained from making had he anticipated the tax, was thought to be so arbitrary and oppressive as to be a denial of dues process."

Conclusion

In sum, Mr. Chairman, we strongly believe that the considerations in favor of enforcing rigidly the private foundation restrictions against The Day Trust which will force the Trust to sell The Day are clearly outweighed by other considerations which favor exempting the Trust by appropriate legislation from the restrictions of Sections 4942 and 4943 of the Code. These considerations include the public policy in favor of preservation of small, independent newspapers, as well as the Constitutional uncertainties involved in the forced sale of the newspaper. The Trustees of the Trust accordingly urge enactment of the provisions of H.R. 1649, which effectively would exempt the Trust from these restrictions. Of course, the Trust would also support a more broadly based bill which would accomplish the same results for the Trust.

Mr. Chairman, on behalf of the Trustees, and the employees of The Day, we thank you very much for this opportunity to present our views on this critical matter.

Appendix

Table A.12

CHAIN OWNERSHIP, U.S. DAILY NEWSPAPERS, 1910-1980

Year	Chains	Chain(a) Newspapers	Independent Newspapers	% U.S. Dailies that are Chain-Owned	% Total Circulation Sold by Chains	Independent(b) Voices
1910	13	62	2140	3	--	2153
1920	55	311	1631	16	43	1686
1930	60	319	1559	17	--	1619
1940	95	485	1300	27	45	1395
1950	109	560	1203	32	46	1312
1960	157	879	869	50	63	1026
1970	167	1047	715	59	71	882
1980	155	1136	609	65	72	764

SOURCES: *Editor and Publisher International Yearbook* (1980); Rosse and Dertouzos (1978).

(a)The totals reflect dailies, not separate establishments. Thus a single establishment publishing a morning and evening edition is counted as two newspapers.

(b)This total approximates the number of different owners, that is, the number of chains added to the number of independent newspapers.

Chairman **Rangel**. Thank you, Mr. Avery. You are a trustee?

Mr. **Avery**. I am a trustee of the Day.

Chairman **Rangel**. Are you active in the foundation activities?

Mr. **Avery**. No.

Chairman **Rangel**. I see.

Mr. C. Davis Haines, president of Public Welfare Foundation.

STATEMENT OF C. DAVIS HAINES, PRESIDENT, PUBLIC WELFARE FOUNDATION, ACCOMPANIED BY LYMAN G. FRIEDMAN, COUNSEL

Mr. **Haines**. Thank you, Mr. Chairman, for this opportunity to appear and be heard. I am Davis Haines, president of Public Welfare Foundation. With me today is foundation's counsel, Lyman G. Friedman, of the law firm of Williams & Connolly, of Washington, D.C.

For the past 30 years or so, the foundation has owned the Spartanburg Herald & Journal, the Gadsden Times, and the Tuscaloosa News. These newspapers are held by the foundation in fully taxable subsidiary corporations. They are operated, to the best of our ability, on sound business principles with editorial and reportorial control in the hands of local personnel.

These personnel are represented here today by the publishers of these newspapers: Mr. Frank Helderman, Sr., of Gadsden, Ala.; Mr. Hubert Hendrix, of Spartanburg, S.C.; and Mr. Charles Land, of Tuscaloosa, Ala.

The foundation, by reason of the dividends paid to it by these subsidiaries, has been able to give approximately $28 million in charitable grants while the subsidiaries have paid approximately $24 million in Federal income taxes. A description of the grants made by the foundation is incorporated in our written statement and is a part of our annual reports.

The foundation fears that compliance with the present statutory excess business holdings divestiture requirement that we dispose of our newspaper holdings, and satisfy our fiduciary responsibility to get full fair value, probably can only be accomplished by sales to the very large newspaper chains. A number of prior witnesses have expressed that same concern.

We think this further concentration of ownership of newspapers could be detrimental to the communities in which they are located; to the newspapers' employees; and, over the long range, could diminish funds available for future grants, because we believe we would be giving up our participation in newspapers which have proven that they are solid long-term growth investments.

With your consent, Mr. Chairman, I will not go into further details in this oral statement, for I believe these are covered in my written statement, which I ask to be included in the record.

Chairman Rangel. Without objection.

Mr. Haines. However, I do wish to provide the foundation's answer to certain statements which I have heard at these hearings in opposition to our request for legislative relief from the divestiture requirements contained in H.R. 2589.

Congressman Stark, in his statement, suggested, by way of illustration, that if a foundation were to sell its interest in business, it could invest the proceeds at 10 percent and have approximately twice as much to give away as it now has. But the amount we now give away, Congressman Stark did not seem to recognize, is after our subsidiary newspaper corporations have paid full regular corporate income taxes. These income taxes, which have aggregated about $24 million, are roughly equal to the $28 million the foundation has given away. Thus, Congressman Stark seems to be suggesting that the foundation would have twice as much to give away if the subsidiaries did not have to pay Federal income taxes.

We cannot disagree with that statement. But we have not asked to be relieved of these corporate income taxes. Of course, to do so would further diminish Treasury receipts in order to correspondingly increase charitable grants. We certainly would not oppose that idea.

However, even if we were to accept the idea of investing in a Government instrument of sufficiently long term to yield 10 percent, we would have no protection against inflation.

Secretary Chapoton said in his statement that the 1969 excess business holdings tax rules were the result of a 1965 Treasury study which alleged the following evils to be present when a tax-exempt foundation owns a business: One, there is a potential for the business to produce a low rate of return. This could lead to unfair competition by the business. Two, there is a potential for the foundation to defer realization by the business of its full profits. This was seen as having two undesirable results. First, this could create a potential for unfair competition, and, second, it could cause a delay in the making of charitable grants by the foundation.

The third 1965 evil Secretary Chapoton cited was the potential misuse of foundations' assets for the benefit of individuals, such as foundations' grantors; and, finally, there was the possible misuse of foundation managers' time by having it taken up in running the business rather than being used for charitable activities.

First of all, these evils simply do not apply to our foundation. Perhaps in 1965 they did apply to some others. But it seems inappropriate to us for all present private foundations which own businesses to be indicted because of the possible acts of a few. This is guilt by association at its extreme. And, to use the possible 1965 misconduct of others as the reason for the creation of an evil in 1989 is illogical, to say the least.

This is so, for in our view, the 1989 evil which may result would be to further concentrate ownership of newpapers in the hands of a few chains and that, we suggest, is as great, if not a more serious, national evil to be avoided than were the possible 1965 indiscretions of a few other foundations.

If those past evils are to be avoided, they should be dealt with directly in the law and could be made specific requirements for a foundation's continued ownership of a business. Moreover, handling a multitude of small investments could prove to be at least as time consuming to the foundation's management as its present oversight of a few locally well-managed newspaper investments.

And, the relief we seek would be at no cost to the Treasury.

Thus, our requested relief could both prohibit the 1965 evil the Treasury saw as well as the 1989 evil we foresee.

For these reasons, and those set forth in my written statement, as well as those advanced by a number of prior witnesses at these hearings, we ask this subcommittee to give favorable consideration to the provisions of H.R. 2589.

Thank you.

[The prepared statement follows:]

STATEMENT OF C. DAVIS HAINES, PRESIDENT, PUBLIC WELFARE FOUNDATION, INC.

This statement is presented by C. Davis Haines, president of Public Welfare Foundation, Inc., a Delaware corporation based in Washington, D.C. hereinafter referred to as Foundation. It is classified as a "private foundation" under the Internal Revenue Code.

Foundation was originally founded in 1947 as Public Welfare Foundation of Austin, Texas and was reincorporated in Delaware in 1951. The donor of Foundation was Charles E. Marsh, an Ohio native, who was a prominent Texas newspaper owner, operating several daily newspapers in that state with his partner, E. S. Fentress.

In the early 1950s Mr. Marsh gave, through bargain sales, three newspapers he owned and acquired after his days in Texas, to Foundation to provide it with what he hoped would be a long-term source of funding for its charitable endeavors. These newspapers are The Spartanburg (S.C.) Herald and Journal, The Tuscaloosa (Ala.) News and The Gadsden (Ala.) Times. These newspapers have been operated in fully taxable subsidiary corporations of Foundation with local editorial and management control and employing sound business practices.

Over the intervening years the income from these newspapers has afforded Foundation the opportunity to distribute more than $28 million in charitable donations, primarily in the United States and, to a lessor extent, internationally. Included in this figure are substantial contributions to charitable activities in the communities in which the newspapers are located. In addition, the individual newspaper corporations have also contributed substantial amounts to community activities of a chartiable nature.

Foundation grants have been used to benefit the poor, disadvantaged and handicapped in a variety of ways with emphasis on direct services where the recipient charitable organization frequently had nowhere else to turn for funding. In 1982, for example, the following categories of grants (and the amounts for each) were:

Health:	
Population	$45,000
Public service	430,300
Supplies	111,000
Research	75,000
Preventive health	253,000
Rehabilitation	157,500
	1,071,800
Education:	
General	55,000
Preschool/day care	25,000
Development	60,000
Scholarship/training	25,000
Special education	77,500
Migrant education	77,000
	319,500
Community education:	
General	497,500
Child care/youth programs	422,000
Community/economic development	228,500
Crime/delinquency/legal aid	365,500
Environment/ecology	229,000
Social services	278,500
Other	235,000
Emergency relief	63,000
Elderly	274,600
Arms control/peace disarmament	252,000
	2,845,600
Miscellaneous:	
General	38,700
Energy/conservation	365,200
Employment	215,500
	619,400
Total for 1982	4,856,300

As of 1982 Foundation's funding level was approximately $5 million which was distributed to 187 organizations (159 in the United States and 28 internationally). Many of these grants came about as the result of direct contact with Foundation and others resulted from our Board's collective interest in specific programmatic areas such as children's health, the elderly and youth unemployment.

It should be emphasized that since the mid-1960s these charitable contributions have been possible after the payment by these newspaper corporations of Federal corporate income taxes as well as all state and local taxes. Federal corporate income taxes paid by Foundation's subsidiaries since 1966 total $24,254,923.

Under the 1969 Tax Reform Act, as it presently stands, Foundation will be required to sell 50 percent of its stock in its three subsidiary newspaper corporations by 1989. Realistically, this means Foundation will be under compulsion to sell 100 percent of its stock or be placed in a minority position with the attendant potential loss in value of the residual stock. This was demonstrated when certain Foundation Board members held a minority stock position in a newspaper resulting in no dividends and a protracted, antagonistic relationship with the majority stockholder with no realistic opportunity to sell the minority position. It took long and expensive litigation before this situation was resolved.

Foundation is among the intended beneficiaries of H.R. 2589 which would remove the present requirement that it sell and would permit it to retain ownership of the newspaper subsidiaries.

Foundation has been approached by prospective purchasers interested in buying our newspapers. In our view these have been either bargain hunters or the large newspaper chains. The chains, in particular, are aware of our necessity to sell by 1989 and it is our opinion that they feel the closer they come to that legislatively mandated deadline the better are their chances to buy our newspapers for a greatly reduced amount.

Our newspapers are operated by local publishers, all of whom were either born or reared in the communities where the newspapers are located. There have been two instances where sons assumed management duties from their fathers. The staffs of all three newspapers are heavily represented by people who have lived in their communities all their lives or for an extended number of years. There is, therefore, a sensitivity to their communities in each instance that is reflected in news coverage, editorial direction and in participation by top management in community activities that is appreciated by community leadership. This condition would be drastically altered if Foundation were forced to sell to a chain because there would be absolutely no assurance of continued management by local people. In fact, the foregoing statement is based on actual experience when a chain, which was a prospective buyer, out of its desire to centralize management and editorial control, indicated its unwillingness to give any assurances of continued employment to local employees.

Sales probably would have to be made to large chains if Foundation is to discharge its fiduciary responsibility of getting full, fair value. This could result in even greater concentration of newspaper ownership by chains.

To summarize: We feel the following detriments are implicit in compliance with the 1989 deadline.

(1) Greater concentration of newspaper ownership by chains.—The 1982 Rand report on "Newspaper Groups: Economy of Scale, Tax Laws and Merger Incentives" prepared for the U.S. Small Business Adminstration shows on Page 101 thereof the following:

In 1910 there were *62* chain newspapers and *2,140* independent newspaper. (Emphasis added)

In 1980 there were *1,136* chain newspapers and *609* independent newspapers. (Emphasis added)

(2) Jeopardy to the tenure of long-term faithful employees.

(3) Reduction of involvement and commitment provided to the respective communities by present local newspaper management.

(4) Less contributions by the newspapers to local charities.

(5) Diminished ability of Foundation to continue its historical practice of increasing its charitable grants.

(6) The inherent threat to value of the newspaper stock implicit in the 1989 deadline.

If the requested relief were granted it is our intent to continue to operate our newspapers using sound business practices and to retain our ownership so long as it is a prudent investment for fiduciaries in our position and, of paramount importance, that we do so solely for the ultimate benefit of our charitable beneficiaries.

Chairman RANGEL. Thank you.

Mr. Campbell?

Mr. CAMPBELL. Thank you, Mr. Chairman. I certainly appreciate the testimony that was just completed by all of you.

I would like to ask a couple of questions, if I might.

Mr. HAINES, I noticed that in the testimony given by the other foundations, the origin of the foundation was given, how they obtained the department store, how they obtained the newspaper.

How did the Public Welfare Foundation obtain its three newspapers?

Mr. HAINES. The newspapers were owned by the donor, Mr. charles Marsh, and in 1952 and 1951, through bargain sales, he gave the newspapers to the foundation.

Mr. **Campbell**. OK. Since 1969, I noticed in the testimony, we discussed prior sale with all of the people here, but specifically since 1969, what action have any of you taken to comply with the law?

Mr. **Avery**. In our case, the law did not come into play until Mr. Bodenwein's last heir died in 1978.

Mr. **Campbell**. What about the holding of the Houston paper, or any of them, since that came about and the law was passed? What have you done other than to deal legislatively or through legal channels to stay where you are?

Mr. **Zivley**. If I may respond, since the 1969 act, they have disposed of each and every business enterprise which they own, save three, one of which is the Houston Chronicle.

Of the other two, one is in the process of being sold now, and the second is expected to be sold in the near-term.

We feel that we have complied with every aspect of the law, including the right to hold these assets during the grandfathered period between now and 1989.

Mr. **Pickle**. Mr. Campbell, I appreciate you asking that question. I understood earlier testimony suggested the Houston endowment had not disposed of excess business holdings.

Mr. **Zivley**. Reference was made to the Treasury report which I might say collaterally had gross inaccuracies at the date of its writing in the 1960's, but certainly the state of facts that existed with respect to Houston endowment in 1969 are materially different in 1983.

Furthermore, because that issue had been raised by a previous speaker, it is our expectation and desire to file a supplemental statement pointing out the inaccuracies to the Treasury Department, as well as pointing out the accurate state of facts as they existed.

Mr. **Pickle**. When you say you intend to dispose of these other two assets in the near-term, do you mean 1 year, 6 months?

Mr. **Zivley**. One of the assets is under contract to be sold now, and the sale will be closed this year. The second is a fairly small investment in a local business in Houston, and I would expect it would be sold—I have no definite timeframe—but within a year or so.

Mr. **Campbell**. You don't look on those as fire sales; you don't put the term fire sale on those?

Mr. **Zivley**. Mr. Campbell, the newspaper has certain special considerations that don't exist with respect to these other businesses. We do not feel that the sale pending, or the other sales which have occurred in the past, would be classified as fire sales.

Mr. **Campbell**. Would you differentiate between the newspaper office and a department store?

Mr. **Zivley**. The special problem with respect to the newspaper is the efforts of the foundation management to carry out the intent of the donor to preserve the newspaper locally. There was an effort made back before the 1969 act to sell the newspaper to a local investor, and it was not successful. That local investor was not able to consummate the purchase.

Mr. **Campbell**. You would have sold it to a local investor at that time?

Mr. ZIVLEY. An effort was made and an actual contract was signed back in the late sixties, prior to the 1969 act. There have been no contracts to sell the paper since the 1969 act.

[The following was subsequently received:]

COMMENTS OF HOUSTON ENDOWMENT, INC.
CONCERNING MISSTATEMENTS OF FACT CONTAINED IN U. S. TREASURY DEPARTMENT REPORT ON PRIVATE FOUNDATIONS
DATED FEBRUARY 2, 1965

The U. S. Treasury Department Report on Private Foundations dated February 2, 1965, contains examples of foundations involved in the affairs of businesses. One example relates to Houston Endowment Inc. ("Endowment") and read as follows:

> "Example 1. The A foundation holds controlling interests in 26 separate corporations 18 of which operate going businesses. One of the businesses is a large and aggressively competitive metropolitan newspaper, with assets reported at a book value of approximately $10,500,000 at the end of 1962 and with gross receipts of more than $17 million for that year. Another of the corporations operates the largest radio broadcasting station in the State. A third, sold to a national concern as of the beginning of 1965, carried on a life insurance business whose total assets had a reported book value of more than $20 million at the end of 1962. Among other businesses controlled by the foundation are a lumber company, several banks, three large hotels, a garage, and a variety of office buildings. Concentrated

largely in one city, these properties present an economic empire of substantial power and influence."

When J. Howard Creekmore, President of Houston Endowment, learned of the Treasury Report following the enactment of the 1969 Act, he was shocked at the inaccuracies relating to Endowment contained in the report, and he called on Congressman Wright Patman to discuss the matter. Congressman Patman told Mr. Creekmore that the report had already been issued and that Endowment would be best advised to ignore its inaccuracies. Endowment has followed Congressman Patman's suggestion, and until this time has taken no action to correct the misstatements contained in the Treasury Report.

Endowment was organized by Jesse H. Jones in 1937, and thereafter until his death in 1956, Mr. Jones from time to time conveyed various properties to Endowment. Mr. Jones' practice was to separately incorporate the businesses he owned, particularly office buildings, in order to cause each business to be responsible for obtaining its own financing. Most of the corporations so organized were organized solely for this purpose, and few of them were active in the normal sense. At the time of the Treasury Report, only 13 corporations were owned by Endowment, and only 5 of those actually did operate going businesses. Accordingly, the statement that Endowment owned 26 separate corporations, 18 of which operated going businesses, was grossly inaccurate. Endowment does not know where the Treasury obtained its information or why Endowment was not contacted by the Treasury for confirmation before the Treasury Report was presented to Congress.

At all times following Mr. Jones' death, Endowment was engaged in efforts to dispose of or liquidate the active businesses which Mr. Jones had given to Endowment. This policy was pursued on the basis of obtaining the best available price for each property, which resulted in sale and liquidation over an extended period of time. After Mr. Creekmore's meeting with Congressman Wright Patman in 1969, the sales and liquidations were carried out pursuant to periodic consultations between Mr. Creekmore and Congressman Patman. As of this date, all of the businesses owned by Endowment have been sold or liquidated except the Jones Lumber Company, the Rice Hotel Laundry Company (an unincorporated business) and the Houston Chronicle Publishing Company.

Endowment has been trying for years to find a buyer for both Jones Lumber Company and the Rice Hotel Laundry Company, but until recently it has been unable to do so. However, in the latter part of June, 1983, Endowment and the Methodist Hospital of Houston agreed orally that the Rice Hotel Laundry will be conveyed to the hospital at a bargain price. This transaction is scheduled to close during the month of July, 1983. There is no present prospect for the sale of Jones Lumber Company, which has an appraised value of $1,100,000.00. If the lumber company is not sold within the next two years, Endowment will liquidate it.

Endowment has continued to own the Houston Chronicle Publishing Company because Endowment desires to maintain the Houston Chronicle's local, independent character. The maintenance of the Houston Chronicle for the benefit of the people of Houston as a local, independent voice was most important to Mr. Jones during his lifetime and would be his wish if he were alive today. Additionally, the Houston Chronicle Publishing Company is an appreciating asset and accordingly gives balance to Endowment's investment portfolio, which is heavily weighted toward fixed income securities with little appreciation potential.

Another Example set out in the Treasury Department Report also relates to Endowment and reads as follows:

> "Example 14 - The X evening newspaper, owned by a foundation, has one competitor, the Z morning newspaper. Z has been in operation for a number of years and has very substantial financial resources. X, however, appears to have made competitive efforts which neither Z nor other newspapers of comparable size elsewhere in the country have been able to duplicate. X utilizes seven wire services; other newspapers of similar size have from one to three. X publishes seven separate editions each day; Z publishes five; no comparable evening newspaper in the country publishes seven. X's normal subscription rate is $2 a month; Z's has been forced down to $2.25; those of newspapers in comparable cities range from $2.20 to $3. X recently purchased the only other evening newspaper in the city. Its advertising rates appear to remain substantially lower than those of any similar newspaper in the country."

In the foregoing Example, the X evening newspaper is the Houston Chronicle, and the Z morning newspaper is the Houston Post.

The Example makes the broad charge that the Houston Chronicle appears to have made competitive efforts which neither the Houston Post nor any other newspaper of comparable size elsewhere in the country has been able to duplicate. It then says:

SUBSTANCE OF STATEMENT

> That the Houston Chronicle utilizes seven wire services; other newspapers of similar size have from one to three.

COMMENT: To determine what newspapers were of similar size at the time of the Treasury Report, there has been compiled, and is attached as Exhibit A, a list of selected newspapers reflecting total paid circulation as of September 30 for the years 1960, 1962, and 1965. This list reveals that there were a number of comparable newspapers. Attached as Exhibit B is a list of such comparable newspapers showing the number of wire services utilized by each in 1962 and 1965. The exhibit reflects that the Houston Chronicle utilized five wire services and not seven, and that the utilization of five wire services was not unusual for a newspaper of the Houston Chronicle's size.

SUBSTANCE OF STATEMENT

> That the Houston Chronicle publishes seven separate editions each day; the Houston Post publishes five; no comparable evening newspaper in the country publishes seven.

COMMENT: Attached and marked Exhibit C is a list of the comparable newspapers reflecting the number of daily editions published by each in 1962 and 1965. This list shows that some newspapers of comparable size to the Houston Chronicle also published seven or more daily editions. It is also pertinent to note that it is customary in the industry for an evening newspaper to publish more editions than a morning newspaper because the period of time covered by an evening newspaper is considerably greater than the period of time covered by a morning newspaper. More news stories are received and more time elapses between the opportunity to publish the first edition and the last.

SUBSTANCE OF STATEMENT

> That the Houston Chronicle's normal subscription rate is $2.00 a month; the Houston Post's has been forced down to $2.25; those of newspapers in comparable cities range from $2.20 to $3.00. Its advertising rates appear to remain substantially lower than those of any similar newspaper in the country.

COMMENTS: Attached hereto, marked Exhibit D, is a compilation reflecting subscription prices charged by the Houston Chronicle, the Houston Post and the Houston Press during a period from July 1, 1937, to February 1, 1982. Also attached, marked Exhibit E, is a tabulation showing the cost per line per thousand circulation, daily national general open line rates, for the comparable newspapers in 1962 and 1965. Since charges for advertising vary in accordance with circulation of the particular newspaper, the cost per line per thousand circulation is the industry's standard for the purpose of comparing advertising charges. Exhibit D reflects that at no time did the Houston Post reduce its charges during the period from July 1, 1937, to February 1, 1982, and, accordingly, the Post's subscription rate was never "forced down". Exhibit E reflects that the Chronicle's charges for advertising were in line with the charges made by the other comparable newspapers.

SUBSTANCE OF STATEMENT

> That the Chronicle recently purchased the only other evening newspaper in the city.

COMMENT: The other evening newspaper referred to in the statement was the Houston Press. Attached as Exhibit F is a letter addressed to Mr. Richard J. V. Johnson, President of the Houston Chronicle, from Lawrence A. Lesser, Vice President of the E. W. Scripps Company, the owner of the Houston Press at the time of its liquidation. This letter reflects that the Chronicle purchased some of the Houston Press's assets after the owner decided upon a complete plan of liquidation.

data

MARKETING RESEARCH FROM THE HOUSTON CHRONICLE
TEXAS LARGEST NEWSPAPER

SELECTED NEWSPAPERS, TOTAL PAID CIRCULATION 1960, 1962, 1965

Market	Newspaper	Daily Total Paid Circulation 9/30/60	Daily Total Paid Circulation 9/30/62	Daily Total Paid Circulation 9/30/65
Boston	Boston Globe (M,E,S)	335,941	341,785	380,571
	Boston Herald Traveler (M,E,S)	346,888	342,852	314,058
	Boston Record American Advertiser (D,S)	537,156	452,333	431,023
Chicago	Chicago's American (E,S)	443,586	444,559	428,852
	Chicago News (E)	539,448	504,880	466,392
	Chicago Sun Times(M,S)	566,219	543,420	538,393
	Chicago Tribune (M,S)	869,958	839,581	840,746
Cincinnati	Cincinnati Enquirer (M,S)	217,449	197,218	191,679
	Cincinnati Post and Times Star (E)	274,874	253,488	243,587
Cleveland	Cleveland Plain Dealer (M,S)	319,662	336,210	370,499
	Cleveland Press & News (E)	381,987	376,630	370,759
Dallas	Dallas News (M,S)	220,066	228,174	237,192
	Dallas Times-Herald (E,S)	190,364	195,987	213,412
Denver	Denver Post (E,S)	262,462	249,867	252,084
	Denver Rocky Mountain News (M,S)	172,357	189,829	194,124
Detroit	Detroit Free Press (M,S)	501,115	509,256	509,410
	Detroit News (E,S)	482,384	702,897	682,834
	Detroit Times (E)	374,769	---	---
Houston	Houston Chronicle (E,S)	205,824	206,663	273,288
	Houston Post (M,S)	218,013	220,491	267,620
	Houston Press (E)	102,517	86,877	---
Philadelphia	Philadelphia Bulletin (E,S)	705,599	709,751	672,235
	Philadelphia Inquirer (M,S)	618,912	604,828	522,941
	Philadelphia News (E)	270,746	318,507	245,503

EXHIBIT A

PS-7-83

SELECTED NEWSPAPERS, TOTAL PAID CIRCULATION 1960, 1962, 1965

(continued)

Market	Newspaper	Daily Total Paid Circulation 9/30/60	Daily Total Paid Circulation 9/30/62	Daily Total Paid Circulation 9/30/65
St. Louis	St. Louis Globe-Democrat (M,S)	339,129	301,098	305,904
	St. Louis Post-Dispatch (E,S)	385,639	347,672	349,508
San Antonio	San Antonio Express-News (M,E,S)	142,606	108,572	136,802
	San Antonio Light (E,S)	110,070	106,217	113,910
Washington, D.C.	The Evening Star (E,S)	279,633	258,167	300,667
	Washington News (E)	179,314	193,013	220,629
	The Washington Post (M,S)	403,010	408,701	444,396

SOURCE: September 30, 1960, 1962, and 1965 Publishers' Statements for the above newspapers.

Research Department/4
6-1-83

data

MARKETING RESEARCH FROM THE HOUSTON CHRONICLE
TEXAS LARGEST NEWSPAPER

NUMBER OF WIRE SERVICES

	1962	1965
BOSTON, MASSACHUSETTS		
Boston Globe (M,E,S)	7	9
Boston Herald Traveler (M,E,S)	3	3
Boston Record American Advertiser (D,S)	2	2
CHICAGO, ILLINOIS		
Chicago's American (E,S)	9	7
Chicago News (E)	4	4
Chicago Sun-Times (M,S)	4	4
Chicago Tribune (M,S)	5	5
CINCINNATI, OHIO		
Cincinnati Enquirer (M,S)	3	3
Cincinnati Post & Times-Star (E)	1	1
CLEVELAND, OHIO		
Cleveland Plain Dealer (M,S)	3	2
Cleveland Press & News (E)	3	3
DALLAS, TEXAS		
Dallas News (M,S)	2	2
Dallas Times Herald (E,S)	2	2
DENVER, COLORADO		
Denver Post (E,S)	5	5
Denver Rocky Mountain News (M,S)	3	3
DETROIT, MICHIGAN		
Detroit Free Press (M,S)	5	5
Detroit News (E,S)	10	12
HOUSTON, TEXAS		
Houston Chronicle (E,S)	5	5
Houston Post (M,S)	3	3
Houston Press (E)	2	--
PHILADELPHIA, PENNSYLVANIA		
Philadelphia Bulletin (E,S)	5	5
Philadelphia Inquirer (M,S)	6	6
Philadelphia News (E)	1	1

EXHIBIT B

NUMBER OF WIRE SERVICES
(continued)

	1962	1965
ST. LOUIS, MISSOURI		
St. Louis Globe-Democrat (M,S)	4	5
St. Louis Post-Dispatch (E,S)	6	6
SAN ANTONIO, TEXAS		
San Antonio Express-News (M,E,S)	1	1
San Antonio Light (E,S)	2	3
WASHINGTON, D.C.		
Washington News (E)	2	2
Washington Post (M,S)	8	11
The Evening Star (E,S)	1	1

SOURCE: Editor & Publisher Year Book, 1962 & 1965.

Research Department/7
5/27/83

data

MARKETING RESEARCH FROM THE HOUSTON CHRONICLE
TEXAS LARGEST NEWSPAPER

SELECTED NEWSPAPERS, # OF DAILY EDITIONS, 1962 VS. 1965

Market	Newspaper	# of Daily Editions 1962	# of Daily Editions 1965
Boston	Boston Globe (M,E,S)	3	3
	Boston Herald Traveler (M,E,S)	7	7
	Boston Record American Advertiser (D,S)	6	6
Chicago	Chicago's American (E,S)	5	4
	Chicago News(E)	4	4
	Chicago Sun Times (M,S)	6	6
	Chicago Tribune (M,S)	9	9
Cincinnati	Cincinnati Enquirer (M,S)	5	6
	Cincinnati Post and Times Star (E)	5	5
Cleveland	Cleveland Plain Dealer (M,S)	2	2
	Cleveland Press & News (E)	3	3
Dallas	Dallas News(M,S)	3	3
	Dallas Times Herald (E,S)	3	3
Denver	Denver Post (E,S)	4	4
	Denver Rocky Mountain News (M,S)	5	5
Detroit	Detroit Free Press (M,S)	4	4
	Detroit News (E,S)	6	5
Houston	Houston Chronicle (E,S)	7	7
	Houston Post (M,S)	5	3
	Houston Press (E)	5	-
Philadelphia	Philadelphia Bulletin (E,S)	7	7
	Philadelphia Inquirer (M,S)	4	4
	Philadelphia News (E)	3	3
St. Louis	St. Louis Globe-Democrat (M,S)	6	6
	St. Louis Post-Dispatch (E,S)	5	5

EXHIBIT C

PS-8-83

SELECTED NEWSPAPERS, # OF DAILY EDITIONS, 1962 VS. 1965
(continued)

Market	Newspaper	# of Daily Editions 1962	# of Daily Editions 1965
San Antonio	San Antonio Express-News (M,E,S)	7	9
	San Antonio Light (E,S)	4	6
Washington D.C.	The Evening Star (E,S)	3	3
	Washington News (E)	3	3
	The Washington Post (M,S)	4	4

SOURCE: September 30, 1962 and September 30, 1965 Publishers' Statements for the above newspapers.

Research Department/4
6-1-83

EXHIBIT D

PRICE CHANGE INFORMATION
FOR
THE THREE HOUSTON DAILY NEWSPAPERS

DATE OF CHANGE	TYPE SUB.	CHRONICLE						POST						PRESS					
		SINGLE COPY		MONTHLY		WEEKLY		SINGLE COPY		MONTHLY		WEEKLY		SINGLE COPY		MONTHLY		WEEKLY	
		FR.	TO	FR.	TO	FR.	TO	FR.	TO.	FR.	TO	FR.	TO	FR.	TO	FR.	TO	FR.	TO
7/1/37	DS	.75	.90	.18	.90	.18	.21			.75	.90	.18	.21						
	DO			.50	.65	.12	.15			.50	.65	.12	.15			.50	.65	.12	.15
10/1/40	D&S									.90	1.00	.21	.25						
	D O									.65	.75	.15	.18						
2/ 1/42	D&S			.90	1.00	.21	.25												
	D O																		
6/4 /42	D O	.03	.05											.03	.05				
3/1/43	D&S			1.00	1.20	.25	.30			1.00	1.20	.25	.30						
	D O			.65	.85	.15	.20			.75	.85	.15	.20			.65	.85	.15	.20
3/1 /47	D&S			1.20	1.50	.30	.37			1.20	1.50	.30	.37						
	D O			.85	1.10	.20	.25			.85	1.10	.20	.25			.85	1.10	.20	.25
	S O	.10	.15					.10	.15										
6/ 1/51	D&S									1.50x	1.75	.37	.42						
	D O									1.10x	1.35	.25	.32						
11/1/52	D&S																		
	D O															1.10	1.30	.25	.30

(x) Not applicable to Mail Subs. or Daily by Mail with Sunday by Carrier.

PRICE CHANGE INFORMATION
FOR
THE THREE HOUSTON DAILY NEWSPAPERS

DATE OF CHANGE		CHRONICLE						POST						PRESS					
		SINGLE COPY		MONTHLY		WEEKLY		SINGLE COPY		MONTHLY		WEEKLY		SINGLE COPY		MONTHLY		WEEKLY	
		FR.	TO	FR.	TO	FR.	TO	FR.	TO	FR.	TO	FR.	TO	FR.	TO	FR.	TO	FR.	TO
12/1/55	D&S			1.50	1.75	.37	.43			1.75	1.95	.42	.45						
	D O			1.10	1.30	.25	.30			1.35	1.50	.32	.35						
	S O	.15	.20					.15	.20										
4/1/57	D&S																		
	D O															1.30	1.45	.30	.35
8/1/61	D&S			1.75	2.00	.43	.47												
	D O	.05	.10	1.30	1.60	.30	.37												
	S O		.20		1.00														
9/1/61	D&S									1.95	2.25x	.45	.55						
	D O							.05	.10	1.50	1.80x	.35	.45						
11/13/61	D.O.													.05	.10				
3/21/64														HOUSTON PRESS CEASED PUBLICATION WITH FRIDAY ISSUE OF MARCH 20, 1964. SUBSCRIPTION LIST PUR. BY CHRON.					
3/1/65	D&S			2.00	2.40x	.47	.55			2.25	2.40	4/1/64 [illegible]							
	D.O		NC	1.60	2.00x	.37	.47			1.90	2.20								
	S.O		NC		NC					2.40	2.50								
8/1/65	D&S									2.25	2.40X		NC						
	D O								NC	1.80	2.00X	.45	.47						
	S O								NC		NC		NC						

(x) Not applicable to Mail Subs. or Daily by Mail with Sunday by Carrier.
(NC) No Change

FOR
THE HOUSTON DAILY NEWSPAPERS

DATE OF CHANGE	TYPE	[illegible] SINGLE COPY FROM	[illegible] SINGLE COPY TO	[illegible] [illegible] FROM	[illegible] [illegible] TO	[illegible] [illegible] FROM	[illegible] [illegible] TO	[illegible] SINGLE COPY FROM	[illegible] SINGLE COPY TO	[illegible] [illegible] FROM	[illegible] [illegible] TO	[illegible] [illegible] FROM	[illegible] [illegible] TO
6/1/'66	D&S	—	—	2.10	2.50x	.55	.58	—	—	—	—	—	—
	D O	—	N.C.	N.C.	2.00x	N.C.	.47	—	—	—	—	—	—
	S O		N.C.	N.C.	1.00								
1/1/'67	D&S	—	—	—	—	—	—	N.C.		2.50	2.60	.58	.60
	D O	—	—	—	—	—	—		.10				
	S O							N.C.	.20				
4/1/'68	D&S			N.C.	2.60	N.C.	.60						
	D O			N.C.	2.00	N.C.	.47					.60	.65
	S O			1.00	1.25								
4/1/'69	D&S			2.50	2.60	.58	.60						
	D O		N.C.	N.C.	2.00	N.C.	.47						
	S O		N.C.	N.C.	1.25			.20	.25				
10/1/69	D&S			2.60	2.80	.60	.65			2.60	2.80		
	D O			2.00	2.20	.47	.50			2.00	2.20	.47	.55
	S O			N.C.	1.25			~~.20~~	~~.25~~	1.30	1.40		
6/1/70	D&S												
	D O												
	S O	[redacted]	[redacted]	1.25	1.50	.25	.35						
7/5/70	D&S												
	D O												
	S O	.25	.35					.25	.35				
7/1/71	D&S			2.80	3.00	.65	.70			2.80	3.00	.65	.70
	D O	.10	.15	2.20	2.30			~~.10~~ .10	~~.15~~ .15	2.20	2.30		
	S O									1.40	1.50		

FOR
THE HOUSTON DAILY NEWSPAPERS

DATE OF CHANGE	TYPE	CHRONICLE						POST					
		SINGLE COPY		MONTHLY		WEEKLY		SINGLE COPY		MONTHLY		WEEKLY	
		FROM	TO	FROM	TO	FROM	TO	FROM	TO	FROM	TO	FROM	TO
1/1/71	D&S			3.00	3.25	.70	.75			3.00	3.25	.70	.75
	D O			N.C.	2.30	N.C.	.53			2.30	2.35		
	S O			1.50	1.75					1.50	1.65		
12/1/7	D&S			3.25	3.75	.75	.90			3.25	3.75		
	D O	.15	.20	N.C.	2.30	N.C.	.53	.15	.20		2.10		
	S S	.35	.50	1.75	2.25		.52	.35	.50	1.65	2.00		
3/1/78	D&S			3.75	4.50					3.75	4.50		
	D O	.20	.25	2.30	3.50			.20	.25	2.40	3.50		
	S S			2.25	3.25					2.00	3.25		
10/1/79	D&S			4.50	5.25					1.50	4.80*		
	D O			N.C.	3.50					N.C.	3.50		
	S S			3.25	4.00					N.C.	3.25		
6/1/80	D&S			5.25	6.25					4.80	6.25		
	D D			3.50	5.00					3.50	5.00		
	S S			4.00	4.50					3.25	4.25		
2/1/81	D&S												
	D O												
	S O	.50	.75					.50	.75*				
2/1/82	D&S			6.25	7.25					6.25	7.25		
	D O			5.00	6.00					5.00	6.00		
	S S			4.50	5.50					4.25	5.50		
	D&S												
	D O												
	S O												

* Post went to 4.80 at an earlier date and then went [illegible]
[illegible]

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from Dor

Chronicle & Post Price Increases
November 1965 thru June 1980

CHRONICLE						POST					
	Single Copy		Home Delivery				Single Copy		Home Delivery		
	D/O	S/O	D/S	D/O	S/O		D/O	S/O	D/S	D/O	S/O
11-01-65	.10	.20	2.40	2.00	1.00	11-01-65	.10	.20	2.40	2.00	1.15
06-01-66			2.50			04-01-66			2.50		
						04-01-67			2.60		
04-01-68		.25			1.25	04-01-68		.25			1.30
04-01-69			2.60								
10-01-69			2.80	2.20		11-01-69			2.80	2.20	1.40
07-01-70		.35			1.50	07-01-70		.35			1.50
07-01-71	.15		3.00	2.30		07-01-71	.15		3.00	2.30	
01-01-74			3.25		1.75	02-01-74			3.25	2.35	1.65
12-01-74	.20	.50	3.75		2.25	12-01-74	.20	.50	3.75	2.40	2.0
03-01-78	.25		4.50	3.50	3.25	04-01-78	.25		4.50	3.50	3.25
						03-01-79			4.80		
10-01-79			5.25		4.00	10-01-79			5.25	4.00	3.75
06-01-80			6.25	5.00	4.50	07-01-80			6.25	5.00	4.25 ~~4.5~~
02-01-81		**.75**				**04-01-81**		**.75**			
02-01-82			**7.25**	**6.00**	**5.50**	**01-01-82**			**7.25**	**6.00**	**5.50**

EXHIBIT E

data

MARKETING RESEARCH FROM THE HOUSTON CHRONICLE
TEXAS LARGEST NEWSPAPER

COST PER LINE PER THOUSAND CIRCULATION
DAILY NATIONAL GENERAL OPEN LINE RATES

	1962			1965		
	Daily Line Rate	Daily Total Circulation	Daily CPM	Daily Line Rate	Daily Total Circulation	Daily CPM
BOSTON						
Boston Globe	$1.25	341,785	.36¢	$1.35	380,571	.35¢
Boston Herald Traveler	$1.25	342,852	.36¢	$1.35	314,058	.43¢
Boston Record American	$1.25	452,333	.28¢	$1.35	431,023	.31¢
CHICAGO						
Chicago's American	$1.55	444,559	.35¢	$1.65	428,852	.38¢
Chicago News	$1.65	504,880	.33¢	$1.70	466,392	.36¢
Chicago Sun-Times	$1.65	543,420	.30¢	$1.75	538,393	.32¢
Chicago Tribune	$2.20	839,581	.26¢	$2.30	840,746	.27¢
CINCINNATI						
Cincinnati Enquirer	$ .50	197,218	.25¢	$ .50	191,679	.26¢
Cincinnati Post & Times-Star	$ .62	253,488	.24¢	$ .62	243,587	.25¢
CLEVELAND						
Cleveland Plain Dealer	$ .82	336,210	.24¢	$ .95	370,499	.26¢
Cleveland Press & News	$ .95	376,630	.25¢	$1.03	370,759	.28¢
DALLAS						
Dallas News	$ .58	228,174	.25¢	$ .66	237,192	.28¢
Dallas Times Herald	$ .55	195,987	.28¢	$ .63	213,412	.30¢

(Over)

EXHIBIT E - Page 2

	1962			1965		
	Daily Line Rate	Daily Total Circulation	Daily CPM	Daily Line Rate	Daily Total Circulation	Daily CPM
DENVER						
Denver Post	$ .70	249,867	.28¢	$ .70	252,084	.28¢
Denver Rocky Mountain News	$ .50	189,829	.26¢	$ .54	194,124	.28¢
DETROIT						
Detroit Free Press	$1.40	509,256	.27¢	$1.40	509,410	.27¢
Detroit News	$1.45	702,897	.21¢	$1.45	682,834	.21¢
HOUSTON						
Houston Chronicle	$ .70	206,663	.34¢	$ .80	273,288	.29¢
Houston Post	$ .70	220,491	.32¢	$ .80	267,620	.30¢
Houston Press	$ .46	86,877	.53¢	---	---	---
PHILADELPHIA						
Philadelphia Bulletin	$1.75	709,751	.25¢	$1.85	672,235	.28¢
Philadelphia Inquirer	$1.70	604,828	.28¢	$1.80	522,941	.34¢
Philadelphia News	$ .80	318,507	.25¢	$ .85	245,503	.35¢
ST. LOUIS						
St. Louis Globe-Democrat	$ .92	301,098	.30¢	$ .92	305,904	.30¢
St. Louis Post-Dispatch	$1.15	347,672	.33¢	$1.15	349,508	.33¢
SAN ANTONIO						
San Antonio Express-News	$ .46	108,572	.42¢	$ .46	136,802	.34¢
San Antonio Light	$ .36	106,217	.34¢	$ .40	113,910	.35¢
WASHINGTON, D.C.						
The Evening Star	$1.07	258,167	.41¢	$1.10	300,667	.36¢
Washington News	$ .73	193,013	.38¢	$ .80	220,629	.36¢
Washington Post	$1.40	408,701	.34¢	$1.44	444,396	.32¢

SOURCES: S.R.D.S. April, 1962 & February, 1965.
September 30, 1962 & September 30, 1965 Publishers' Statements for the selected newspapers.

Research Department/7
6-2-83

THE E. W. SCRIPPS COMPANY

LAWRENCE A. LESER
VICE PRESIDENT
FINANCE & CORPORATE DEVELOPMENT

1100 CENTRAL TRUST TOWER
CINCINNATI, OHIO 45202

May 26, 1983

Mr. Richard J. V. Johnson
President
Houston Chronicle
801 Texas Street
Houston, Texas 77002

Dear Dick:

Someone recently reported that the Houston Chronicle purchased our afternoon newspaper, the Houston Press, in 1964. To set the record straight, this was not the case.

On March 20, 1964 our subsidiary, Houston Press Company, ceased publication and adopted a plan of complete liquidation. During that liquidation process we sold the Press' assets, including some to the Chronicle.

I hope this clarifies the record. Should you be contacted on this, feel free to divulge the contents of this letter.

Cordially,

L. A. LESER

LAL/mdd

EXHIBIT F

Mr. **CAMPBELL**. Let me ask this same question, if I might, Mr. Haines. We discussed the national chains and all. Have you ever had an offer to buy any of your newspapers by a hopeful investor?

Mr. **HAINES**. We have been contacted by people who might or might not have been agents for local people.

Mr. **CAMPBELL**. Agents for local people?

Mr. **HAINES**. There have been attorneys, and others, from the communities who have been in touch with us, but we could never tell if they represented local people or were simply trying to explore the possibility of a sale out of their own interest—much as a broker might function.

Mr. **CAMPBELL**. You never had any interest in selling to those local people or pursuing it?

Mr. **HAINES**. Up to this point, I think it is fair to say where certain parameters were outlined as to the relative worth of the newspapers, there was a loss of interest due to considerations of the amounts involved.

Mr. **CAMPBELL**. Both newspapers had some approach from local entities, and I understand the Connecticut newspaper; but the others have had some interest from local people in purchasing the newspapers. They were not able to get it together in Houston, and my understanding is that the people that approached the intermediaries, the local people that approached you, they did not meet an offer.

Was there ever a specific price given back and forth?

Mr. **HAINES**. No, we never got to that point.

Mr. **CAMPBELL**. All right, sir. Let me ask a couple of other questions.

You have already answered from the Houston Endowment the investiture of other assets. What about other assets of the various foundations?

What other assets do you hold, and what have you sold since 1969, since this act went in?

Let me ask Mr. Burke.

Mr. **BURKE**. We had no other asset of the same sort.

Mr. **CAMPBELL**. Mr. Haines?

Mr. **HAINES**. Other assets were accumulated in the foundation and in the subsidiaries as a result of growth, and so forth, securities and fixed-income instruments.

Mr. **CAMPBELL**. It was an equity position as a minority or majority stockholder?

Mr. **HAINES**. No, sir, these were public securities.

Mr. **CAMPBELL**. But you did not have any other operating businesses or nothing in that category?

Mr. **HAINES**. No, sir.

Mr. **CAMPBELL**. Let me ask you this. The foundation, does your foundation pay out for the public benefit more than required under the public law?

Mr. **HAINES**. Yes, sir.

Mr. **CAMPBELL**. Do you have public boards independent from the business, from the business as you operate?

Mr. **HAINES**. Not public boards, but we do have boards of the subsidiaries. I am president of the foundation and, for convenience, I am also president of the three subsidiary corporations.

Mr. CAMPBELL. You have a kind of an interlocking relationship with the business and the foundation.

Mr. HAINES. I have a relationship, yes, but I won't say it is interlocking.

The operators of the newspapers, the people who are on the scene, really do it—running the newspapers—these gentlemen seated behind me have no relationship to the foundation, no official position on the foundation.

Mr. CAMPBELL. You do sit on the board of the subsidiary that runs the businesses?

Mr. HAINES. Well, yes, I do, to oversee our investment.

Mr. CAMPBELL. You don't own any individual stock in the business?

Mr. HAINES. No, sir, locally owned by the foundation.

Mr. CAMPBELL. Mr. Chairman, if you will indulge me, I just have a couple more questions.

Are any trustees, officers or employees of the foundation officers, shareholders or employees of the business, of the business holdings?

Mr. HAINES. I am.

Mr. CAMPBELL. Other than yourself?

Mr. HAINES. The secretary and treasurer of the foundation is also secretary-treasurer of the subsidiary corporation.

Mr. CAMPBELL. OK. Let me ask you this: Who are the general recipients of your grants?

I am going to ask this Houston paper, also.

I understand any type of a foundation and efforts to the public welfare, to help the program, assistance to food and nutrition and all of that, but I noticed, though, that some of you give a lot of money to some nuclear disarmament, peace movements, and those are political expressions. How do you maintain independence between your foundations and your newspapers on your political expressions when you utilize money that is tax free to engage in that type of thing?

I will go across the board.

Mr. HAINES. We have absolutely nothing to do with the editorial policy of our newspapers. If you care to ask these gentlemen behind me, I think they will attest to that. We have never had anything to do with the editorial news policy or day-to-day operations of those newspapers, so anything that the foundation might do has no relationship to the function of a newspaper.

Mr. CAMPBELL. But a foundation does engage in giving moneys, even in overseas movements, political expression?

Mr. HAINES. That is a matter of interpretation.

There are some things that we give to that might fall into that category. That is a matter of judgment, but if it is true that we do give to some of those, there is no fallout from that as far as the newspapers are concerned.

Mr. CAMPBELL. You maintain complete independence from the newspapers? That is a concern, because of the interrelationship of boards and the use of the funds in areas that might be deemed political expression, both domestic and foreign, and in foreign, oftentimes the use of the funds might even be against the interests of what is in the policy of the United States. I wanted to establish we have no linkage between the newspapers and the endowments.

Mr. ZIVLEY. There is no linkage of any sort of that nature between the paper and the endowment.

On pages 3 and 4 of our statement are a list of the more significant recent grants, and they demonstrate that they have been made to traditional type charities, such things as $3 million to the Museum of Fine Arts, $1.1 million to the University of Notre Dame, almost $7 million to Rice University in Houston, $6.3 million to Herman Hospital, and the like.

I would say that the major grants of the Houston Endowment have been in the health care field and the educational field, and no charge has ever been made that any grants were made by that institution.

Mr. CAMPBELL. I certainly understand that. I want you to understand why I am pursuing this line of questioning. It is a very serious situtiion when an endowment is—they have the first amendment rights—running a newspaper, and an endowment, where there could be linkage.

Mr. AVERY. In our own case, the trustee of the foundation is a bank. The will restricts grants to educational, charitable, whatever, nonprofit corporations in the daily circulation area, so that eliminates any foreign contamination.

As a practical matter, I cannot recall a grant a bank has made—in fact, I think the bank could kind of frown on such things.

Mr. CAMPBELL. Thank you, gentlemen, for your answers.

Chairman RANGEL. Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

I appreciate the chance to make a brief statement.

I have been chairing another subcommittee all morning and just now have been able to get here.

I have one observation to make, and I want to direct this to Mr. Zivley.

Our committee had prepared for us a background print for use in these hearings on foundations. The print makes a summation of the 1969 law, and it describes the three primary concerns that the Congress had in establishing the provision on excess business holdings. One was a concern that private foundations were being used to maintain corporate control rather than for charitable purposes.

The second was a belief that other firms in the same business might suffer competitively. The third concern was that the charity would suffer if the business role was emphasized and vice versa.

It seems to me that the self-dealing rules and the payout requirements put to rest the concerns Congress had in 1969.

If we were to exempt foundations from section 4943, there would be no revenue loss to the Government; the private foundation would continue to be subject to all excise taxes on investment income.

The foundations would be subject to the tax for failure to distribute income, the tax on jeopardy investments, and the tax on unrelated business income. Mr. Zivley, does the newspaper pay Federal income tax?

Mr. ZIVLEY. The Houston Chronicle pays Federal income taxes the same as any other newspaper.

Mr. PICKLE. The concerns we had originally have been met, there is no accusation of unfair competition, and I think your testimony makes a good case for the cause that there should be a continuation of the ownership of independent, locally owned newspapers.

What did the Houston Endowment pay out last year in contributions?

Mr. ZIVLEY. The first exhibit which is attached to our statement sets forth the contributions over the past 6 years. In 1982, the aggregate contributions were some $18,700,000. Compared with that, the minimum investment return was some $13 million.

The minimum investment return over the past 6 years has been materially exceeded in 5 of the 6 years.

Mr. PICKLE. If you paid out $18 to $19 million, that represents approximately what?

Mr. ZIVLEY. $13 million would have been the required distribution.

Mr. PICKLE. $18,700,000 represents 6.95 percent of your assets?

Mr. ZIVLEY. Yes, sir.

Mr. PICKLE. Then your payout is considerably over the minimum.

Mr. ZIVLEY. We have paid out in excess of the minimum, and the expectation is that that will continue, based on the investment philosophy and investment results that Houston Endowment has been able to achieve.

Mr. PICKLE. I am satisfied with your testimony. I have been the coauthor of a bill that would allow the continuation of local ownership of newspapers by foundations.

We must ask ourselves, what is the best public policy? Is it to allow a foundation to continue to own a local, independent newspaper?

Is it best to sell it to a big chain or foreign entity? What is in the public interest?

My feeling is it would be better to keep it locally owned. I hope that is what the Congress will do.

I thank you for your testimony. I think you make a good case.

Chairman RANGEL. Will the gentleman yield?

Mr. PICKLE. I yield to the gentleman.

Chairman RANGEL. I notice you say that your legislation would exempt newspapers. There are any number of bills and recommendations that would exempt hotels, telephone companies, retail stores, and resorts. I just wonder whether or not your bill would be subject to amendment to accommodate other Members that have similar divestiture problems with foundations in their district.

Mr. PICKLE. Do you have in mind to offer an amendment to my bill?

Chairman RANGEL. Every time it comes up, there is another exemption proposed.

One of the reasons we are having these hearings is that the chairman of the full committee really does not want to have individuals coming up asking for special exemptions to existing law. We are really talking about repealing, or we will have to start looking at individual situations which cause undue hardship.

I think everyone has made a case as to the hardship that could be caused, so the chairman of this subcommittee would welcome recommendations that you would have now as well as at some later date.

I raised the question because I did not want them to walk away thinking that we could just consider the newspapers.

Mr. **Pickle**. You asked me a question—would our bill be subject to amendment? It might be.

I won't say that we would or would not exclude others. I don't believe that is my prerogative for deciding at this point.

I am not trying to include anything else.

Chairman **Rangel**. I guess what I want the panel to recognize is we have other foundations that have problems with business situations, and I hope that your recommendations will take that into consideration.

Thank you very much for your testimony.

The Chair welcomes and turns over the gavel to Mr. Guarini of New Jersey as I must go to another congressional assignment.

Mr. **Guarini** [presiding]. Thank you, Mr. Chairman.

I would like to call the next panel, excess business holdings and divestiture requirement.

Mr. Hybl, president, El Pomar Foundation; Melvin Brown, president, Wells & Wade Fruit Co.; Vester Hughes, Jr., counsel, H. E. Butt Foundation. We welcome you gentlemen here. We are happy to see you.

Perhaps you might start off, Mr. Kogovsek, our colleague from Colorado.

STATEMENT OF HON. RAY KOGOVSEK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. **Kogovsek**. Thank you very much, Mr. Chairman, for presenting myself with the opportunity to introduce my good friend from Colorado, a man that I served with in the Colorado State Legislature some years ago. Mr. Bill Hybl, chairman of the El Pomar Foundation.

I have had a chance to talk with you and Mr. Rangel and Mr. Pickle and other members of the minority side about a specific situation of an institution in Colorado that is very important to me and the whole Colorado delegation. We have shown our interest just yesterday in this institution called the El Pomar Foundation and the Broadmoor Hotel by introducing House Resolution 3458, which would provide an exemption for the El Pomar Foundation.

I am not going to take up a lot of time explaining why it should be done. That is why Mr. Hybl is here this afternoon. I just wanted the committee to know how strongly myself and the Colorado delegation feels about this specific situation. The Broadmoor Hotel is part of the history of Colorado, and I would like to, at this time, introduce Bill Hybl.

Mr. **Guarini**. Thank you very much.

You have talked with us on several occasions, and I know of your great concern and interest.

We welcome you, Mr. Hybl.

Mr. **Hybl**. Thank you, Congressman.

Mr. **Pickle**. Before you proceed—I may have to leave—I would like to present my friend, Vester Hughes, who is here with us today. He is a close friend of mine, has been for many years, from west Texas. He represents the H. E. Butt Foundation.

I am pleased to welcome you here, Mr. Hughes, and we look forward to hearing your testimony. If I have to step out, it is because I have to go to another committee. But I hope to get back shortly.

Mr. GUARINI. Thank you very much.

We welcome you, Mr. Hughes. And we will ask Mr. Hybl if he would be good enough to speak in behalf of the El Pomar Foundation.

STATEMENT OF WILLIAM J. HYBL, PRESIDENT, EL POMAR FOUNDATION

Mr. HYBL. Thank you, Mr. Chairman, members of the committee. I would ask that my written statement be included in the record and that I be given time to summarize briefly some of the areas covered.

The El Pomar Foundation was founded in 1937 by Spencer Penrose. At that time, he was owner of the Broadmoor Hotel. One hundred percent ownership of the Broadmoor has stayed with Mr. Penrose and the El Pomar Foundation. That ownership is 100 percent ownership, and after the 1969 Tax Reform Act, several things occurred.

The El Pomar Foundation has divested 11 separate companies over the last 15 years. Good business judgment and criteria which trustees use in their fiduciary relationship were the basis for El Pomar Foundation retaining the Broadmoor Hotel. I like to go into three areas before I address the specifics of section 4943.

First, the Broadmoor has been an appreciating asset which through the years increased the ability of the El Pomar Foundation to make charitable distributions throughout the State of Colorado. Second, the Broadmoor Hotel represents somthing less than 20 percent of the assets of the foundation. The hotel certainly is a significant contributor with its appreciating value and current income.

The third reason is that the Broadmoor is a part of the local history of the Pikes Peak region, Colorado Springs, and the State of Colorado, just as many of the other foundations presenting their cases today are part of their regional history. The foundations would regret being in a position where the hotel was sold to an offshore interest or a large hotel chain. The fact is, the hotel is a profitable entity, a holding which has been very good for the foundation as an investment. The foundation has not been directly involved in day-to-day management. There are a good group of managers that run the hotel. The foundation is run separately. The Broadmoor produced sound income for the foundation and has been a significant asset.

The El Pomar Foundation started with some $18 million, has made grants of $75 million, and still has a corpus of $104 million being used for charitable good in the State of Colorado. Grants include public charities that are traditional, nontraditional, and new institutions with innovative ideas throughout the State.

There are no linear heirs of the founders, Mr. and Mrs. Penrose, involved as officers or directors in either the El Pomar Foundation or the Broadmoor Hotel. This has been a major concern expressed about foundation through the years. The Broadmoor pays full taxes, Federal, State and local, and is not involved in unfair competition with any other similar taxpaying entities.

Section 4943 has been an impediment to the foundation and its conduct of business and restricts the way in which the trustees exercise their fiduciary responsibilities. We would share comments and endorse those statements which indicate that repeal of section 4943 is appropriate.

The ownership of the Broadmoor by the El Pomar is one more example that there should be latitude involved in section 4943 or provision for exception or full repeal.

Thank you very much.

Mr. GUARINI. Thank you.

I see you have a statement which will be placed in the record, too.

[The prepared statement follows:]

STATEMENT OF WILLIAM J. HYBL, PRESIDENT, EL POMAR FOUNDATION

Mr. Chairman and Members of the Subcommittee, my name is William J. Hybl and I am President of the El Pomar Foundation. I appreciate the opportunity to testify before you on the subject of Excess Business Holdings by private foundations.

Organized in 1937, the El Pomar Foundation has a forty-six year history of philanthropy within the State of Colorado, having made grants in excess of $75,000,000. This statement sets forth a history of the El Pomar Foundation and respectfully requests relief from Section 4943 (Foundation Excess Business Holdings of the Internal Revenue Code).

It is helpful to understand the background of the El Pomar Foundation and its one hundred percent ownership of the Broadmoor Hotel, Inc. The Broadmoor Hotel was built in 1918 in Colorado Springs, Colorado by Spencer Penrose. It was intended and continues to be one of the truly fine resorts in the world. Prior to his death in 1939, Spencer Penrose directed the charitable purpose of the Foundation was to use the principal and income of the Foundation "for such charitable uses and purposes (including public educational, scientific and benevolent uses and purposes) exclusively as will, in the absolute and uncontrolled discretion of the trustees of the corporation most effectively assist, encourage and promote the general well being of the inhabitants of the State of Colorado".

Penrose was one of the pioneers in the development of the Pikes Peak region of Colorado. He first came to Colorado Springs in 1891. Over a period of the next twenty-five years he accumulated a substantial fortune from real estate and mining activities in the area. His first big strike came from his ownership of an interest in a gold mining claims, the Cash on Delivery Mine in the Cripple Creek, Colorado area. His largest gains were made from the Utah Copper Company which was formed by him and his associates in the early 1900's. The Utah Copper Company was ultimately merged into Kennecott Copper Company in 1923.

In 1915 Spencer Penrose began to turn his attention from mining to the investment of his fortune and other interests which were of a less profitable but more satisfying nature. In 1915 he commenced the construction of an automobile highway to the summit of Pikes Peak, which was completed in 1916. He inaugurated the Pikes Peak Hill Climb race for automobiles which continues today. Pikes Peak Highway has been donated to the government and is now operated by the City of Colorado Springs.

As previously indicated, the Foundation has made charitable grants of over $75,000,000 including The Colorado College, The Penrose Hospital for Cancer Research, the Regional Library for the City of Colorado Springs, the University of Denver, Chicano Education Project, Domestic Violence of Colorado Springs, and Silver Key Senior Services. (Appendix A) The Foundation has placed an emphasis on capital construction programs and rehabilitation of existing facilities.

The Foundation has continued to own the Broadmoor Hotel and hire management which has oriented itself to the needs of the people of Colorado Springs and Colorado in general. The trustees of the Foundation have consistently placed service to the community and the general welfare of the residents of the State of Colorado as highest on their list of priorities. The Broadmoor Hotel is subject to the corporate income tax imposed by Section 11 of the Internal Revenue Code in the same manner as other hotel corporations, or any tax-paying corporation for that matter.

There is no donor control of El Pomar Foundation. Its founder, Spencer Penrose, died in 1939 and his wife in 1956. Since then there has been no member of the Penrose family associated with the Foundation or its holdings in any capacity. There have been no instances of self-dealing, and the foundation has consistently distributed its income for charitable purposes on a current basis in compliance with prevailing law. (Appendix B) The trustees have never made any investments which were not motivated by the specific charitable purposes of the Foundation or which would in any way jeopardize the ability of the Foundation to do so. The Foundation prints and distributes an Annual Report with financial statements, guidelines and other correspondence so that prospective grantees will know how the funds of the Foundation are available, being managed, and distributed for their benefit.

During consideration of the 1969 Tax Reform Act the Senate Finance Committee received written testimony from the trustees of El Pomar Foundation urging the Committee to delete the provision in the House-passed Bill requiring private foundations to divest their excess business holdings. The trustees' testimonies set forth the history of the El Pomar Foundation, the charitable activities of the Foundation and the adverse effects on the Colorado Springs community if the Broadmoor Hotel were required to be sold by the Foundation.

"Our greatest concern is the future of the Broadmoor Hotel. If the Foundation were required to sell the Broadmoor the only potential purchasers who could afford to purchase it would be major hotel chains or perhaps one of the large conglomerate corporations. In either event the result would be absentee ownership by an organization which had no special interest in the welfare of Colorado Springs or the inhabitants of Colorado generally. Indeed, management of such an organization would probably not even be aware of many of the problems of the area. Any organization which was oriented primarily towards the profit motive rather than public service would undoubtedly curtail many of the activities presently being conducted by the Broadmoor . . . We submit there is nothing inherently bad in having a charitable foundation own a controlling interest in a business enterprise. We see nothing wrong in having the profits of an operating business corporation inure to the benefit of the public at large, rather than just to certain private stockholders. We think the public welfare is better served by having the beneficial ownership of the Broadmoor Hotel in the citizens of the State of Colorado rather than the stockholders of some major hotel chain corporation . . . "

Senator Gordon Allott of Colorado testified in 1969 before the Senate Finance Committee in support of the written remarks of the trustees of the El Pomar Foundation (Senate Finance Committee Hearings, page 4357). In response to this testimony, the Senate Finance Committee provided a grandfather clause for the El Pomar Foundation. The grandfather clause, which would have allowed retention of the Broadmoor Hotel by El Pomar Foundation, was passed by the Senate; however, was then omitted in the Conference Committee Report. The current law, Section 4943, as approved by the Conference Committee and signed into law by the President in 1969, provides that a business that is one hundred percent owned by a private foundation as of May 26, 1969, is required to accomplish a three-stage period of forced divestiture:

(1) During the twenty year period, 1969 through 1989, the private foundation may continue to own 100 percent of the stock of the business.

(2) By May 26, 1989, however, the foundation must reduce its ownership to 50 percent.

(3) Finally, May 26, 2004, the foundation must reduce its ownership by 35 percent where it may remain forever.

El Pomar Foundation seeks legislation which would recognize its position as a foundation established over forty-five years ago with no substantial contributors or their lineal heirs associated with its operation for the past twenty-five years.

The legislation before you today proposes the El Pomar Foundation be exempted from the divestiture requirements under Section 4943 of the Internal Revenue Code. The El Pomar Foundation would submit the following:

Existing law allows any and all prospective buyers of the El Pomar Foundation's interest in the Broadmoor Hotel to take unfair advantage of the Foundation since the Foundation is under a legal mandate to sell at least fifty percent of its interest in the Hotel by 1989. The prime concern of the El Pomar Foundation trustees is to realize the top dollar value for the Broadmoor Hotel and to continue and expand the charitable activities of the El Pomar Foundation.

The fact is the Broadmoor is one of a kind and the type of institution which has a relatively small sale market. There is every indication there are organizations which do have an interest in purchasing the Hotel and are aware of the divestiture requirements. This has placed potential purchasers in the sound business position of waiting for the approach of 1989 so El Pomar Foundation will be forced to bargain for sale. As previously indicated, the Hotel is not a readily marketable entity. In fact, it is sui generis. This is a unique situation, for a potential purchasing entity would be not only buying the Broadmoor Hotel, but the many surrounding improvements including the Broadmoor World Arena, Broadmoor ski area, three eighteen hole golf courses, and numerous other associated and related activities. In addition, the Broadmoor Hotel has nearly, 2,000 acres of land adjacent to the Hotel which, because of development in the Colorado Springs area, are being sold to prospective developers in small parcels. The first sale of land was made in October, 1981. These sales will continue to increase the net income of Broadmoor Hotel and the dividends received by the El Pomar Foundation, which in turn are devoted to charitable purposes.

The management which been hired by the Foundation to operate the Broadmoor Hotel has certainly placed in interests of the Pikes Peak region and the State of Colorado at the forefront. The Broadmoor Hotel has been a good citizen of the community. There are many in the community who feel the uniqueness of this situation, and local ownership, are very good reasons for continued ownership by the El Pomar Foundation.

The abusive factors that led to the foundation legislation in 1969 have been corrected. The legislation itself was a catalyst which forced many foundations to comply and to continue to strive to serve the public better. As has been previously pointed out, one of the prime reasons for the 4943 provision, the operation of business entities free from the influence of the grantors of the foundation or their lineal heirs, has been met. It should be stressed that the Broadmoor Hotel operates under exactly the same tax burdens as a privately owned hotel, and is not placed in a posture where it is in unfair competition with other privately owned entities.

It is for the foregoing reasons the El Pomar Foundation respectfully requests your positive consideration.

Appendix A.—El Pomar Foundation

[Grants 1937 to Jan. 1, 1983]

Education:	
Higher Education:	
The Colorado College	$9,546,312
The Colorado College (Minority and Handicapped scholarships)	1,212,850
Air Force Academy Foundation	1,030,000
Colorado Women's College	652,735
University of Denver	4,706,195
Other Private and State Colleges	624,691
Secondary Education:	
Colorado Outward Bound	610,000
Chicano Education Project	115,000
Fountain Valley School	3,560,215
Miscellaneous as a group	2,151,685
Health:	
Penrose Hospital and Cancer Research	12,823,580
Other hospitals	1,315,882
Miscellaneous as a group	414,865
Humanities:	
Central City Opera House Association	449,250
Cheyenne Mountain Museum & Zoological Society	9,735,599
Colorado Springs Fine Arts Center	2,032,088
Colorado Springs Symphony	264,200
Citizens for a Theatre Auditorium	3,100,000
Miscellaneous as a group	1,390,856
Religion: Miscellaneous as a group	2,256,615
Resources and environment:	
City of Colorado Springs Library	2,203,872
Garden of the Gods Land Purchase	250,000
Miscellaneous as a group	545,000
Welfare:	
Boys Club Association	508,278
Boy & Girl Scouts	430,480

United Way	$1,806,186
YMCA-YWCA	2,050,000
Chins Up	38,000
Workout Limited	55,000
Domestic Violence	190,000
Brockhurst Boys Ranch	140,000
Y/JA	703,000
Silver Key Senior Services	213,425
Miscellaneous as a group	1,115,498
Other:	
United States Olympic Committee	1,050,000
Miscellaneous as a group	2,749.249
Total grants to Jan. 1, 1983	72,040,606

APPENDIX B.—EL POMAR FOUNDATION—SUMMARY OF INCOME AND GRANTS FROM DECEMBER 31, 1937 THROUGH DECEMBER 31, 1982

Year	Revenues	Expenses	Federal Excise Tax	Excess of rev. over expenses	Grants	Balance
Dec. 16 to 31, 1937	64,650	7		64,643	84,474	(19,831)
1938		6,064		(6,064)	55,254	(61,318)
1939	13,425	6,288		7,137	74,700	(67,563)
1940	365,675	6,745		358,930	100,933	257,997
1941	323,950	6,823		317,127	403,697	(86,570)
1942	347,235	12,569		334,666	248,250	86,416
1943	405,369	23,698		381,671	199,842	181,829
1944	422,116	36,647		385,469	316,611	68,858
1945	473,592	14,814		458,778	282,985	175,793
1946	426,129	10,241		415,888	466,371	(50,483)
1947	438,343	16,519		421,824	366,982	54,842
1948	454,509	12,132		442,377	454,112	(11,735)
1949	452,590	11,159		441,431	693,150	(251,719)
1950	469,392	10,380		459,012	413,945	45,067
1951	470,997	10,983		460,014	540,204	(80,190)
1952	473,872	9,985		463,887	534,532	(70,645)
1953	573,689	10,481		563,208	725,208	(162,647)
1954	1,429,630	11,081		1,418,549	563,224	855,325
1955	1,982,573	10,995		1,971,578	536,961	1,434,617
1956	1,188,831	10,757		1,178,074	1,288,246	(110,172)
1957	1,152,420	11,648		1,140,772	1,569,697	(428,925)
1958	1,032,179	11,797		1,020,382	1,895,458	(875,076)
1959	1,162,431	14,077		1,148,354	1,502,715	(354,361)
1960	1,099,459	14,483		1,084,976	916,312	168,664
1961	1,107,373	14,872		1,092,501	1,169,770	(77,269)
1962	1,110,248	11,123		1,099,125	1,501,597	(402,472)
1963	1,263,162	9,487		1,253,675	1,465,215	(211,540)
1964	918,929	9,524		909,405	920,398	(10,993)
1965	1,686,301	10,834		1,675,467	1,404,550	270,917
1966	1,872,239	9,902		1,862,337	1,166,266	696,071
1967	1,517,824	8,786		1,509,038	1,558,009	(48,971)
1968	1,520,504	9,239		1,511,265	2,394,193	(882,928)
1969	3,020,870	14,754		3,006,116	3,071,317	(65,201)
1970	3,223,159	14,334	128,926	3,079,899	3,219,560	(139,661)

APPENDIX B.—EL POMAR FOUNDATION—SUMMARY OF INCOME AND GRANTS FROM DECEMBER 31, 1937 THROUGH DECEMBER 31, 1982—Continued

Year	Revenues	Expenses	Federal Excise Tax	Excess of rev. over expenses	Grants	Balance
1971	2,697,739	22,473	113,987	2,561,279	2,670,676	(109,397)
1972	3,009,599	18,907	132,276	2,858,416	4,816,968	(1,958,552)
1973	3,128,228	20,991	125,057	2,982,180	3,122,666	(140,486)
1974	3,460,425	21,115	138,345	3,300,965	3,386,353	(65,388)
1975	3,405,868	21,738	136,163	3,247,967	3,108,275	139,692
1976	3,546,846	33,107	151,186	3,362,553	2,959,996	402,557
1977	3,963,095	44,620	135,973	3,782,502	1,967,287	1,815,215
1978	3,374,607	47,180	71,622	3,255,805	3,283,446	(27,641)
1979	3,559,454	65,334	67,925	3,426,195	3,419,948	6,247
1980	3,964,323	63,825	67,854	3,832,644	3,898,684	(66,040)
1981	4,380,892	71,569	113,848	4,195,475	3,597,080	598,395
1982	4,097,487	111,577	81,554	3,904,356	3,855,717	48,639
	75,052,228	945,664	1,464,716	72,641,848	72,192,481	449,367

Mr. GUARINI. Mr. Brown, you represent the A. Z. Wells Foundation, I understand.

STATEMENT OF MELVIN R. BROWN, PRESIDENT, WELLS & WADE FRUIT CO., ACCOMPANIED BY LOY D. SMITH, VICE PRESIDENT AND MANAGER, PERSONAL TRUST AND ESTATE DEPARTMENT, SEATTLE FIRST NATIONAL BANK, ON BEHALF OF THE A. Z. WELLS FOUNDATION

Mr. BROWN. Yes, sir.

My statement is a summary, and I will paraphrase it.

I am Melvin Brown, president of the Wells & Wade Fruit Co. of Wenatchee, Wash. Mr Smith and I are here today representing the A. Z. Wells Foundation, whose principal assets and designated beneficiaries are all located in north-central Washington State.

It was founded by Mr. Wells. He founded two pioneer businesses back in 1915—the hardware store and a fruit company. At the time of his death, he and his wife owned all the stock and they transferred it at that time to the foundation. In their founding document, they stated that this trust should retain this stock as long as the two businesses operated profitably, and that they should continue in the fruit and hardware business.

They further stated that all the net income of the foundation should be distributed among certain named social agencies and nonprofit hospitals in north central Washington. These instructions have all been satisfactorily followed during the time since 1950.

We feel all concerned have profited. We point to 250 steady jobs plus seasonal employment in the area. We point to the annual cash payments to the beneficiaries every year and to the five social agencies involved now amounting to more than the United Way grants, making the foundation a major factor in Wenatchee's source of charitable funds.

North-central Washington has gained from the employment opportunities and the economic benefits from the employment opportunities and the economic benefits that accrue from the two businesses continuing to operate in the area. Although it was not the purpose of the foundation, I want to say that the Federal Government has received over $8 million in income taxes as a generous tradeoff for the estate and gift tax loss of well under a million incurred at the time of the founders' gift.

Unfortunately, the divestitute requirements provide that this arrangement cannot continue. The foundation is instructed to reduce its ownership of each company to 50 percent by 1989. Since a partial interest in a company with unlisted shares is not marketable, it appears the companies or their assets must be sold.

This can undoubtedly be accomplished, but would certainly not be in the best interest of assuring continuity for this arrangement that was the expressed intent of the founders. Although distributions of the foundation since its inception have occurred every year and have shown steady growth, the income of the foundation recently has not grown as rapidly as its net asset value.

The biggest factor by far in 1983 causing this is the speculative purchases of agricultural land in the Northwest by domestic and foreign buyers. In the apple growing area, this has caused assessed values of orchards to increase more rapidly than their average income which fluctuates from year to year, of course, based on the selling price of each crop.

Private foundation law currently requires an annual distribution of an amount equal to 5 percent of asset value. This appears to be a reasonable level, but this rapid increase in our asset valuation on top of the usual fluctuations in corporate earnings will this year force some distribution of principal to meet this percentage.

Since stock of the two companies comprises a major part of the principal of the foundation, this 5-percent rule represents to us an additional divestiture requirement that will soon force some sort of liquidation. Presumably, it is not the intent of the Federal law to limit the beneficial impact of such foundations upon the communities they serve. Those of us who manage the A. Z. Wells Foundation and its principal assets believe that exemption from this divestiture should be extended to companies and foundations such as ours.

We have attached a short magazine narrative to our statement describing the purpose and operation of the foundation of which all of us concerned are very proud. Although we have also submitted a proposed amendment to section 4943 that would exempt the A. Z. Wells foundation from divestiture, we have concluded that such an amendment would be too narrow to exempt all foundations that merit such relief.

The simplest and most equitable provision would be repeal of this section. This would allow this foundation and others to own closely held companies, to continue in business as Mr. Wells requested and as several of his beneficiaries have asked in letters to your committee.

Thank you.

Mr. GUARINI. Thank you very much, Mr. Brown.

[The prepared statement follows:]

STATEMENT OF MELVIN R. BROWN, PRESIDENT, WELLS & WADE FRUIT CO. ON BEHALF OF THE A. Z. WELLS FOUNDATION

I am Melvin Brown, president of the Wells & Wade Fruit Co. of Wenatchee, Washington.

I am here today representing the A. Z. Wells Foundation whose principal assets and designated beneficiaries are all located in north central Washington State.

Mr. Wells was the principal factor in starting and building two pioneer Wenatchee, Washington businesses. One is the Wells & Wade Hardware, which was founded in 1915, and the other is the Wells & Wade Fruit Co., which began two years later. At the time of his death in 1950, he and his wife owned all the stock of both companies. In January of the year, his will and her agreement created the A. Z. Wells Foundation and transferred to it all of that stock. In their founding document they stated that this perpetual trust should retain this stock as long as the two businesses operated profitably and they should continue in the fruit and hardware business. They further stated that all the net income of the Foundation should be distributed among certain named social agencies and non-profit hospitals in North Central Wash.

These instructions have all been satisfactorily followed during the ensuing years, and all concerned have profited:

The Companies continue to provide about 250 steady jobs plus seasonal employment in the Wenatchee area.

The beneficiaries of the trust have received annual cash payments that in the case of the 5 social agencies involved exceeds their United Way grants, thus making the Foundation a major factor in Wenatchee's source of charitable funds.

North Central Washington has gained from the employment opportunities and the economic benefits that accrue from the two businesses continuing to operate in the area as customers of other industries and as payers of the various local and State taxes.

The Federal government has received over 8 million dollars in income taxes as a generous trade-off for the estate and gift tax loss of less than a million dollars that was incurred by exemptions granted the founders.

Unfortunately, the divestiture requirements for business holdings of private foundation provides that this beneficial arrangement cannot continue. The Foundation is instructed to reduce its ownership of each company to 50 percent by 1989. Since a minority interest in a small company with unlisted shares is not marketable, it appears the Companies or their assets must be sold. This can undoubtedly be accomplished, but would certainly not be the best way to insure the continuity of this proven satisfactory arrangement for North Central Washington, that was the expressed intent of the founders.

Although distributions of the Foundation since its inception have occurred, every year and have shown a steady growth, the income of the Foundation recently has not grown as rapidly as its net asset value. An attached chart recaps those pertinent figures each year since the 1969 Act. The biggest factor by far in 1983 that is causing this is the speculative purchases of agricultural land in the Northwest by both domestic and foreign buyers. In the apple growing area, this has caused assessed values of orchards to increase more rapidly than their average income, which fluctuates from year to year based on the selling price of each crop. Private foundation laws currently require an annual distribution of an amount equal to 5% of asset value. This would appear to be a reasonable level, but this rapid increase in our asset valuation on top of the usual fluctuations in corporate earnings forces the distribution of principal to meet this percentage. Since stock and contracts of the two Companies comprise almost all of the principal of the Foundation, this 5 percent rule represents to us nothing more than an additional divestiture requirement that will soon force liquidation.

Since it is clearly not the intent of Federal Law to limit the beneficial impact of such foundations upon the communities they serve, those of us who manage the A. Z. Wells Foundation and its principal assets believe that exemption from the divestiture provisions should be extended to those business holdings that were acquired before 1969, whose activities are substantially unchanged, and whose operation is not under the control of or personally benefiting any disqualified persons such as the founders. We further believe that the distributable amount required due to the net value of such holdings should be limited to the dividends received from them.

I have attached the suggested wording of such an amendment to the law and a short magazine narrative describing the purpose and operation of the Foundation, of which all of us concerned are very proud. Thank you.

Appearing for the A. Z. Wells Foundation, whose address is: c/o Seattle-First National Bank. Attn: William C. Blanchard Asst. Vice President & Manager Charitable Trust Department. P.O. Box 3586, Seattle WA 98124, (206) 583-3160. Were: Loy D. Smith, Vice President & Manager, Personal Trust & Estate Dept., Seattle-First National Bank, P.O. Box 3586, Seattle WA 98124, (206) 583-3394. And: Melvin R. Brown, President, Wells & Wade Fruit Co., P.O. Box 259, Wenatchee WA 98801, (509) 662-2149.

A. Z. WELLS FOUNDATION—PER 990-PF TAX RETURN

Year	Fair market value	Distributable amount		Qualifying distribution	
		Amount	Percentage	Amount	Percentage
1970	$1,847,295	$19,254	1.04	$372,432	[1]20.16
1971	3,057,233	34,216	1.12	47,790	1.56
1972	3,972,972	160,552	4.04	317,184	[2]7.98
1973	3,254,872	139,788	4.29	64,887	1.99
1974	3,233,727	172,883	5.35	81,677	2.53
1975	2,844,520	168,335	5.92	99,217	3.49
1976	3,488,101	187,823	5.38	107,073	3.07
1977	3,474,618	171,361	4.93	102,409	2.95
1978	3,566,897	176,095	4.94	112,406	3.15
1979	3,962,394	194,546	4.91	131,789	3.33
1980	4,117,284	219,165	5.32	211,225	5.13

A. Z. WELLS FOUNDATION—PER 990-PF TAX RETURN—Continued

Year	Fair market value	Distributable amount		Qualifying distribution	
		Amount	Percentage	Amount	Percentage
1981	5,454,955	267,577	4.91	237,171	4.35
1982	8,837,907	436,900	4.94	259,824	2.94

[1] Includes $32[illegible] in stock of the two companies.

[2] Includes $281,[illegible] that had been accumulated for almost 20 years for a specific donation.

SUGGESTED TAX REFORM ACT AMENDMENT

Section 101(1)(4) of the Tax Reform Act of 1969 is amended by adding at the end thereof the following new subparagraph:

(D)(i) The divestiture requirements of section 4943 of the Internal Revenue Code of 1954 shall not apply to the stock of a corporation held by any private foundation which would otherwise constitute excess business holdings under section 4943 of such Code if the foundation and the corporation meet the following conditions:

(I) Substantially all the assets of the corporation are used in operating a business enterprise.

(II) The stock described in subclause (I) was acquired by the foundation solely by gift, devise, or bequest.

(III) Neither the donor of such stock nor any member of his family nor any member of the family of any person from whom such stock was received by bequest (within the meaning of section 4946(d) of such Code) is a manager of such foundation (as defined in section 4946(b) of such Code) or has been at any time from and after the date on which such foundation first became a private foundation.

(IV) The business enterprise described in subclause (I) has been of substantially the same character as on the date of the last gift, devise, or bequest of such stock by any contributor or member of his family.

This subparagraph shall apply to the private foundation only if the foundation does not acquire any stock or other interest in any business enterprise on or after May 26, 1969, which would otherwise constitute excess business holdings under section 4943 of such Code.

(D)(ii) In applying the minimum distribution requirements of section 4942 of the Internal Revenue Code of 1954 to a private foundation that meets the requirements of this subparagraph, the distributable amount for the taxable year shall be an amount equal to:

(I) 5 percent of the net value of assets other than the stock of a corporation that meets the requirements of this subparagraph plus

(II) the adjusted net income received from dividends on the stock of such corporation or 5 percent of the net value of the stock of said corporation held by said foundation at the end of the taxable year, whichever is the lesser.

If such a corporation unreasonably accumulates income (as defined in Sections 531-537 of the Internal Revenue Code), the provisions of this subparagraph shall not apply to the foundation owning stock of such corporation.

The astonishing Wells Foundation is a constant reminder that

To Keep Good, Loyal Workers You Must Be Loyal to Them

Since 1950 it has given over $1,000,000 to community causes

ALFRED Z. WELLS left the businesses to the employees and the profits to the community.

Out of Wenatchee's past comes a formula for business success that's often overlooked in today's mad scramble: If you hope to keep good, loyal people in your organization, you must be absolutely loyal to them.

That formula acquired a very special meaning in 1950 to the several hundred employees of the various business enterprises of Alfred Z. Wells. He had worked for years with many of those people, and had known some of them since the early days, after 1902, when he first came to Wenatchee.

In 1950 he was 81, and although he never did retire, he had been feeling greatly concerned over what could happen to all these fine people and their families when he was gone. Too many times in the past, he had watched the tragic pattern unfold for such employees . . .

If he permitted his businesses to be simply sold as part of his estate, the new owners would most likely come in with their own key personnel — and change things around to the point where none of the old jobs would be the same — or at all secure. Even to risk letting such a thing happen, as Wells saw it, was unthinkable, an act of disloyalty. But what could he do to prevent it? His solution for that, which he had been preparing for some time, came out in his will — upon his death in 1950.

He had put the businesses into a trust foundation — which would let them continue to operate as long as they showed a profit. The present managers would remain in charge, no one would have had to quit, everyone could leave homemaking plans unchanged, and feel assured of job continuity in pleasant surroundings.

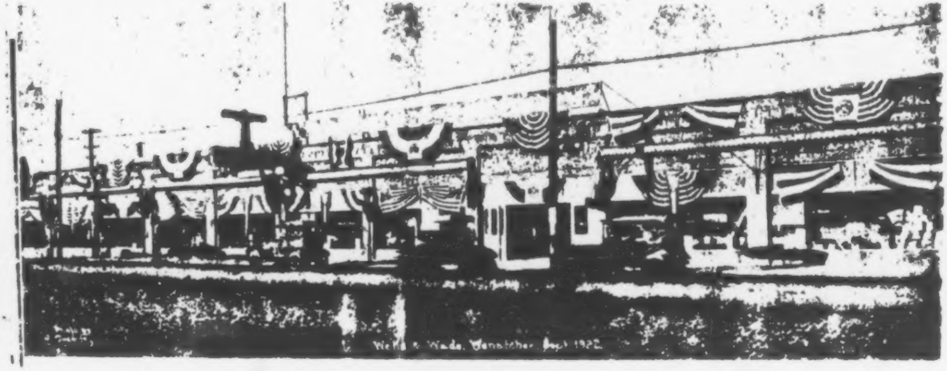
That was 23 years ago, and any skeptics, who might once have considered the plan too idealistic, have long been silent. Those businesses — mainly Wells and Wade Hardware and Wells and Wade Fruit Company — have continued to thrive. They've also earned substantial and regular net profits . . . all of which are distributed in cash to a select list of community funds and organizations — like non-profit hospitals, scholarship funds, youth organizations, and charity groups.

The story of the Wells Foundation, with all of its accomplishments since 1950, has already earned a large place in community history. But what about the story of A. Z. Wells himself? Was he as big in life as this foundation makes him seem? Even bigger, according to his friends, and the will simply reflects his unflagging interest and activity in community betterment.

He was called Zebbie by his wife and close friends, and usually A. Z. in the business community. He was born in 1869 in Rosedale, Missouri, but grew up in Rapid City, South Dakota. There, while working in a small hardware store, he met and married, in 1896, his wife, Emogene. It was to be an exceptionally happy marriage, and they observed their Golden Anniversary in 1946. But there was also tragedy, because their only child died at birth.

In 1902 Zebbie and Emogene Wells moved to Wenatchee. He and a nephew, Alfred Morris, formed a partnership, and purchased the town's only hardware store

By 1929 the hardware business (below) had expanded down the block.



from Frans Scheble at the corner of Orondo and Mission streets. The irrigation boom, which came in 1903 with the completion of the High Line Canal, created heavy demand for pipe, pumps, spraying machinery, and countless other hardware items for the many new farms and their building. Soon Wells and Morris Hardware was forced to move into a new and larger location on Wenatchee Avenue.

Their customers, however, weren't the only ones becoming excited over the area's fruit growing potential. Wells and Morris themselves were soon extensively developing orchards as a business sideline. Before long they had cleared several hundred acres of sagebrush, and planted the land to young apple trees. The largest tract was at Azwell, on the Columbia some 50 miles north of Wenatchee.

The orchard enterprise expanded so rapidly that Wells and Morris decided to dissolve the partnership — with Morris to own the store, and Wells to own and operate the orchards. A. Z. Wells, though, soon began missing the challenge of merchandising — which to him had always been as fascinating as any hobby. Or rather, as friends recall, he liked to think of business as his only real hobby.

By 1914 he was back into it, this time with J. M. Wade, a well-known fruit buyer. They formed the dual purpose corporation of Wells and Wade, and began operating both in fruit and hardware in a location at the corner of Wenatchee Avenue and Yakima Street.

In 1917, though, they incorporated a Wells and Wade Fruit Company, and moved the fruit business to a separate location, with Wade in charge. Wells took full charge of the hardware store, which remained under the original firm name of Wells and Wade, Inc.

Both firms flourished, but it was in this period that Wells' genius for attracting good men into his organizations began producing the most noticeable results.

He and his staff began adding so many departments and services that soon the store was no longer a corner hardware — or even a local one, because of the rapidly expanding wholesale department. Wells and Wade soon became one of the major suppliers for all of North Central Washington.

The key advantage of such expansion, as Wells had seen it, was to give the firm enough purchasing power to cope with any kind of competition — from mail-order houses to super discount stores. Growth of the firm over the years, and on into the present, has proved him right. In fact, the Wells and Wade Hardware Company has long been considered unique in its field, a model for success.

Its retail hardware store is the largest in the state. It contains the largest sporting goods section in North Central Washington. Wells and Wade Hardware not only sells virtually everything a hardware store would be expected to have, it also is in the manufacturing business. Items ranging from tree pruners, picking bags and buckets, to custom made sheet metal items for orchardists and other businesses. It's the largest picking bag and bucket manufacturer in the world. Wells and Wade has supplied these items to such exotic places as Bagdad.

The firm also has been awarded the mechanical — plumbing, heating, air-conditioning, and electrical contracts for some of the major construction projects in Central Washington. One of the latest of these was a 1.5 million dollar contract on the five-million dollar new Wenatchee High School.

The Wells and Wade Fruit Company also expanded, but in a different way. At the start it handled fruit from other growers, as well as from its own orchards, and eventually operated storage and packing plants at both Azwell and Wenatchee. The firm kept buying more orchard properties, however, and finally discontinued handling other fruit in order to concentrate on its own. That change-over had been completed in 1937 — the year Wells bought out Wade's entire interest in both the fruit and hardware companies.

From then to his death in 1950, Wells managed the entire operation — and as his friends remember, enjoyed every minute of it. As part of this pleasure in business, he liked nothing better than to watch help members of his organization be effective community leaders.

Mrs. Emogene Wells (left) in 1951 at the dedication of the Wells home to Wenatchee Valley College.

His wife, Emogene, who was to sur him for many years, worked closely him on his plans for the trust founda She herself would receive a separate fund that would keep her for life, but her own death most of that fund woul added to the main foundation.

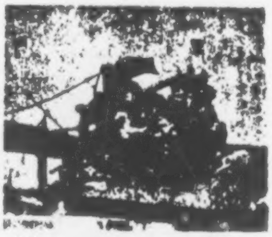
Perhaps the best-known gift to community from Zebbie and Emo Wells was made in 1949, the year befor died. Their large home on Fifth Street its five-acre tract of beautifully scaped grounds was given as a cam site — for what is now Wenatchee Va College. The home itself was used years for administrative and classr purposes. Two other capital gifts w made in the will: $50,000 for a YW building fund, and $150,000 for a c auditorium in Wenatchee.

From the main foundation's net earni more than $1,000,000 has already b distributed in cash to the beneficiar These recipients, all located in No Central Washington, are listed under th headings:

(1) All non-profit hospitals in NCW, YMCA, YWCA, Boy Scouts, Camp F Girls, and Salvation Army, and scholarships for boys interested in ho culture, and for girls interested in ho economics.

The employees, meanwhile, of the Wells and Wade firms remain assured job and career continuity under policies that Alfred Z. Wells so carefu built into the trust foundation.

Among many experiments in early Wells orchards was this row-crop planting of potatoes and tomatoes.



This is one of the first irrigation pumps used by the firm.

North Central Washington Council w/1 613
Boy Scouts of America
(509) 662-5501 213 N. Chelan St. Wenatchee, WA 98801
SCOUTING/USA

June 8, 1983

The Honorable Charles B. Rangel
Chairman, Sub-Committee on Oversight
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth Blvd.
Washington D.C. 20515

Dear Congressman Rangle,

The North Central Washington Council, Boy Scouts of America, a non-profit agency incorporated under the State of Washington, wishes to convey the following message concerning one of the finest businesses in North Central Washington. Wells and Wade Hardware and Fruit Company are one of the pioneer businesses in the area, dating back to 1902, and is still one of the leading firms in North Central Washington. To be successful in business for over eighty-one years shows not only good sound management, but also operation success in growth, goal setting, and management that not only cares for its employees, but the community as a whole.

The community of Wenatchee, as well as the 4½ counties of North Central Washington is a better place to live because of the far-sightedness of the founding of Wells & Wade, Inc., A.Z. Wells. We know for a fact almost $4,000,000 has been distributed by the A.Z. Wells Foundation to many non-profit organizations, agencies, and hospitals since 1950 when the Foundation and Trust was set-up by A.Z. Wells. We, the Boy Scouts of America have benefited over the years to the point our single largest contributor, including the United Way, is from the A.Z. Wells Foundation.

We are writing this letter to raise our concern as to the projected change in the tax laws that would effect the future of Wells and Wade, Inc. We would hope the present structure of the foundation will be able to continue in its present form and not to deviate from the original wishes of the founder, A.Z. Wells.

Serving Chelan, Douglas, Grant, Ferry and Okanogan Counties

United Way Agency

SCOUTING/USA

Letter to:
Congressman Rangle

We, as the Executive Board of the North Central Washington Council, and the many friends and beneficaries of the A.Z. Wells Foundation, hereby unanimously request the continuation of the present structure and mode of operation.

Most sincerely,

NORTH CENTRAL WASHINGTON COUNCIL

by William L. Dalton
Secretary & Scout Executive

Marvin L. White
Council President

Attested by:

Earl R. Lehman

Archie Van Doren

Stanley E. Grimm

Leonard F. Wells

LaDonna McCroskey

Marjorie Kennedy

Central Washington Hospital

May 31, 1983

The Honorable Charles B. Rangel
Chairman, Sub-Committee on Oversight,
Committee on Ways & Means
U.S. House of Representatives
Washington D.C.

Dear Representative Rangel:

We have been asked by Mr. Melvin Brown and Mr. Loy Smith to communicate with you regarding the operation of the A.Z. Wells Foundation. It is our understanding that your Subcommittee on Oversight, Committee on Ways and Means, is interested in reviewing the concenquences and impact of the Tax Reform Act of 1969 on Foundation Operations and more broadly perhaps examine the impacts on philanthropy generally.

The benevolance of Mr. A.Z. Wells towards our community is appreciated and understood by those of us who reside here. Suffice it to say that with his death in 1950, his intent to endow the community was clear. Mr. Wells placed his businesses into a trust foundation which would permit the continued operation of his businesses "as long as they showed a profit". These profits would be distributed in cash to a select list of community funds and organizations including our not-for-profit hospital. All the documents associated with the creation of the Foundation clearly reflect the desire of Mr. and Mrs. Wells to leave a substantial part of their respective estates for charitable purposes to further the welfare of the community and individual citizens within the said area, so long as the operation of said companies was profitable.

The Tax Reform Act of 1969 first impacted the Foundation by levying a tax on certain rental income. The IRS code provided an exemption from this tax if the Foundation held less than 80% of the stock in each Wells and Wade Company and with the required court approval, 20% of the stock was distributed to the beneficiaries. The act apparently requires further that the Foundation cannot hold over 50% of the stock in either Wells and Wade Company after May 26, 1989, nor over 35% after May 26, 2004 to avoid serious tax penalties.

Central Washington Hospital

The Honorable Charles B. Rangel
May 31, 1983
Page two

It is our belief that the operation of the A.Z. Wells Foundation has been satisfactory and beneficial to all beneficiaries and that the operation of the Wells and Wade Fruit Company and Hardware Company under Trust Management should be continued. We further believe in general that similar endowment type trusts be permitted to flourish without government intervention except for what policing and/or control requirements might be prudent. In any event, donor intent must be preserved and protected in order to maintain the credibility needed for charitable giving. Such giving is clearly in the public's interest and we urge that it be permitted and encouraged by restructuring the laws in appropriate ways.

Thank you for your consideration.

Sincerely,

THOMAS J. TROY
Administrator

TJT/[illegible]l
cc: Melvin Brown

WILLIAM BOOTH
FOUNDER

FOUNDED IN 1865

THE SALVATION ARMY
Post Office Box 594
WENATCHEE, WASHINGTON 98801
(509) 662-5103

May 24, 1983

The Honorable Charles B. Rangel
Chairman, Sub-Committee on Oversight
Committee on Ways And Means
U.S. House of Representatives

Sir;

For many years The Salvation Army in Wenatchee, Washington has been aided beyond measure as a beneficiary of the A.Z. Wells Foundation.

The annual grants have brought a sense of stability and continuity to the many and varied programs we conduct.

The grants have helped us to provide year round programs for young people who do not feel comfortable or cannot afford other youth programs. (in our community).

We are able to provide visitors and counselling to the elderly as well as to meet the ever increasing emergency needs of an area with 10% unemployment and a large number of migrant individuals and families.

I write with a feeling of great concern that the intent of A.Z. Wells might be subverted. I feel it to be essential that Wells and Wade Hardware and Wells and Wade Fruit, as well as other endowment type trusts, be allowed to continue under trust management without undue intervention.

I believe that we and other beneficiarcies, over a period of time, suffer if this is changed.

Thank you for the opportunity to express my personal feelings.

May God bless you and yours.

Sincerely,

Harold Wells

Harold Wells, Major
Commanding Officer

HW:dw

WILLIAM BOOTH, Founder / JARL WAHLSTRÖM, General / WILL PRATT, Territorial Commander / RONALD G. IRWIN, Divisional Commander

YWCA
212 First Street
Wenatchee, Wa 98801
662-3531

June 1, 1983

The Honorable Charles B. Rangel
Chairman, Sub-Committee on Oversight
Committee on Ways & Means
U. S. House of Representatives
Washington D. C. 20515

Dear Congressman Rangel,

The Wenatchee Valley Y.W.C.A. building was purchased with money received from the A. Z. Wells Foundation. The Y.W.C.A. has been and is dependent on the Wells Foundation money for a successful and balanced financial operation.

The Board of the Wenatchee Valley Y.W.C.A. is very satisfied with the operation of the A. Z. Wells Foundation, and we believe that it would be most beneficial to all involved for the two pioneer Wenatchee businesses to continue to operate under the trust management system.

We also urge that other grantors be allowed to set up "endowment" type trusts without any government intervention.

Your consideration and action on this matter will be appreciated.

Sincerely,

Mary Jo Milne
President

Joan Lolos

Joan Lolos
Executive Director

Mr. GUARINI. Mr. Hughes of the H. E. Butt Foundation.

STATEMENT OF VESTER T. HUGHES, JR., COUNSEL, H. E. BUTT FOUNDATION

Mr. HUGHES. Thank you, Mr. Chairman.

I am Vester T. Hughes, Jr., Mr. Chairman, an attorney with the law firm of Hughes & Hill, Dallas, Tex., and I am here representing the H. E. Butt Foundation.

The H. E. Butt Foundation will be 50 years old in 1984. Fortunately, its founders, Mr. and Mrs. H. E. Butt, are still living, although Mr. Butt just passed his 88th birthday.

The foundation has long been an important factor in Texas charities. In the days when there was great difficulty in the Hispanic community along the border of Texas with the disease of tuberculosis, it was an early entrant walking hand in hand with the State of Texas in furnishing health care in order to alleviate the problem. In more recent times, it has had a significant impact on the mental health difficulties in Texas and, indeed, spearheaded in conjunction with the State of Texas experimental camp arrangements in the outdoor facilities it has had since 1954 to see if there could be some relief afforded those suffering mental illnesses of one sort or another.

This has been a highly successful project. The campgrounds which have been maintained by the foundation since 1954 had more than 18,000 campers in 1982 alone, from miscellaneous groups ranging from religious groups, 4-H Clubs, Boy Scout groups, community service groups, minorities, senior citizens, and many others.

There has been some question raised in the course of the hearings about the knowledge of individuals and groups as to availability of charities. That has not been a problem with the H.E. Butt Foundation and its campgrounds. Today, there is a long waiting list and many benefit from the operations of its charitable enterprise. It also operates a religious interdenominational camp called Laity Lodge, and associated with that, Christian Men, Inc. This has been a force in the Texas Christian faith movement.

Our problem is somewhat different than those addressed by others today. We associate ourselves with those who would repeal 4943. Our specific problem would also be addressed and solved were there to be an exception for preferred stock. Since prior to 1969 and the amendments that limited the holdings of a corporation, stock of which was owned by donors and other disqualified persons, Mr. and Mrs. Butt both have had in their wills bequests to the foundation of preferred stock of the H. E. Butt Grocery Co.

Last year, the foundation spent some $1,100,000 in pursuit of the various charitable objectives. The thought in leaving the preferred stock to the foundation was that this stock would furnish an income stream which would be available for the pursuit of these objectives after the deaths of Mr. and Mrs. Butt. The $1,100,000 that was expended last year came primarily from individual gifts by Mr. and Mrs. Butt or associated individuals or corporations.

So the thought in bequeathing preferred stock to the foundation was that there would be a perpetuated income stream.

It should be noted that in this regard the preferred stock does not afford any opportunity for corporate control nor is there an undue involvement of the foundation in any way in the business affairs of the corporation. So what had been deemed to be abuses in 1969 are not present today in this case.

On the other hand, our advisers tell us this preferred stock would be valued at approximately 40 percent of face or par, value. It is a 6-percent preferred stock, which means that were it to be sold, if the Butt Foundation is required to divest itself of the stock, in order to receive an equivalent return, the foundation would have to reinvest proceeds at a 15-percent rate of return. A 15-percent return on a safe basis cannot be obtained from any investment we know or today.

Therefore, while we associate ourselves with those who would repeal 4943, for indeed that would solve the problem, an exception for preferred stock would also solve our problem and would not run into any of the possible abuses or questions that seem to have been raised with other types of holdings.

Thank you for allowing us to appear.

[The prepared statement follows:]

STATEMENT OF VESTER T. HUGHES, JR., ESQ., HUGHES & HILL, ON BEHALF OF THE H. E. BUTT FOUNDATION

I. Summary of Current Law

A. General Rules

Section 4943 of the Internal Revenue Code of 1954, as amended ("I.R.C."), imposes penalty taxes on the "excess business holdings" of private foundations. Excess business holdings include stock held by a private foundation where the foundation and "disqualified persons" together hold more than 20% of the voting stock of the issuing corporation. Generally, substantial contributors, foundation managers, their families, entities they control, and other similarly related parties are all disqualified persons.[1] In addition, divestiture of excess business holdings to disqualified persons is limited by the self-dealing rules imposed by Section 4941, which penalize sales, exchanges, and loans between a private foundation and disqualified persons.

B. Exceptions and Transition Rules

1. As a general rule, a private foundation that acquires a stock interest which constitutes excess business holdings by gift or bequest is allowed 5 years to divest itself of such excess holdings before any tax can be imposed.[2] Section 4943(c)(4) and (5), however, provide special rules for excess business holdings acquired before May 26, 1969, or acquired under a will executed before that date ("old holdings"). For example, if a private foundation receives an interest constituting excess business holdings under a pre-1969 bequest, and the private foundation and all disqualified persons together hold more than 75% of the voting stock or equity of the enterprise, the excess business holdings need only to be disposed of within 15 years.[3] A similar rule extends the holding period to 20 years where the foundation's interest equals or exceeds 95% of the enterprise.

2. In addition to the foregoing rules extending the permissible holding period for certain stock, two exceptions to the self-dealing prohibition are particularly applicable to dispositions of excess business holdings. Section 4941(c)(2)(F) permits the issuing corporation to redeem or recapitalize the stock held by the private foundation, provided the offer is extended to all securities of the same class and the foundation receives at least fair market value.

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[1] See I.R.C. § 4946.

[2] I.R.C. § 4943(c)(6).

[3] I.R.C. § 4943(c)(4)(B)(ii).

Further, under certain circumstances, Section 101(l)(2)(B) of the Tax Reform Act of 1969[4] permits a private foundation to sell old holdings to disqualified persons, where such disposition is compelled by Section 4943. The foundation must receive at least fair market value, and the sale must not be a "prohibited transaction" within Section 503(b).[5]

II. It is imperative that regulation of private foundations be tailored to curb abuses with minimal burdens.

A. The Role of Private Foundations.

Private foundations have long been a part of America's charitable tradition. Foundations are independent nonprofit organizations, privately funded and managed, and dedicated to public service in support of social, educational, cultural, religious, and other charitable causes. The majority of foundations are private foundations funded by individuals and their families. Non-corporate foundations account for about 5% of all private sector giving in the U.S.[6]

The importance of foundations in the new spirit of voluntarism was aptly summarized by the Task Force:

> . . . [F] oundations occupy a unique position in the private sector and have the potential for playing a more important role in helping to address the social and economic needs facing the country. Foundations are unique in their flexibility to respond to needs, in their ability to take risks and in their freedom to explore problems. The diversity among the nation's 22,000 foundations is a classic example of the pluralism in America's private sector and provides an opportunity for a rich and creative response to those issues and needs which are within the resources of the foundation community.[7]

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[4] 83 Stat. 533.

[5] See Treas. Reg. 53.4941(d)-4(b) (restating Section 101(l)(2)(B)).

[6] Building Partnerships, Report of the President's Task Force on Private Sector Initiatives, 50 (1982) (hereinafter, "Presidential Report").

[7] Presidential Report at 50; accord, Bromberg & Sugarman, Termination of Private Foundations, 50 Taxes 388, 390 (1972).

The Task Force specifically recommended that "[e] very effort . . . be made to reverse the declining birthrate of foundations by aggressively promoting the formation of new foundations."[8]

If foundations are to play their appointed role, they must not be overregulated. Rules that hamper foundations and inhibit their growth should be closely scrutinized. While some regulation of foundations is unquestionably necessary, any such regulation must be tailored to curb perceived abuses without imposing unproductive burdens on foundations.

III. Rationale Underlying Existing Rules

Re-crafting any of the current regulations must begin with a careful delineation of the abuses that prompted the rule's passage. The general goal of the foundation provisions enacted in the Tax Reform Act of 1969 was simple: private foundations must produce public benefits to justify their favorable tax status. This indisputable premise resulted in a number of provisions, including the tax on excess business holdings. Congress enacted the Section 4943 tax on excess business holdings and the accompanying divestiture rules for essentially three reasons.

1) Private foundations should not be used to benefit private interests by preserving control of closely-held corporations.

2) The maintenance of control and the nurturing of a business should not be permitted to divert foundations from gathering and dispensing charitable funds.

3) Businesses owned by foundations might unfairly compete with businesses whose owners are taxable.[9]

IV. The Costs of the Existing Rules

The provisions enacted in the Tax Reform Act of 1969 sweep broadly. Of course, heavy regulation of foundations imposes a toll on charity and private initiative. In reviewing these rules, every effort must be made to identify areas where the toll on charity is greatest and where the likelihood of abuse is minimal. Revision is demanded where charity is burdened to no purpose.

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[8] Presidential Report at 51.

[9] H. Rep. No. 413, 91st Cong., 1st Sess., at 27 (1969) (reprinted in 1969-3 C.B. 200, 218); S. Rep. No. 552, 91st Cong., 1st Sess., at 39 (1969) (reprinted in 1969-3 C.B. 423, 449).

The previous section enumerated the purposes behind the tax on excess business holdings. The costs of that provision fall on private foundations in two ways. First, Section 4943 directly injures foundations by forcing distress sales of major assets. Excess business holdings typically consist of large blocks of the stock of closely-held corporations for which there is no outside market.[10] As the Senate stated when it amended the self-dealing exceptions in 1976, disqualified persons are often the only market for a private foundation's holdings.[11] But, as previously noted, shares acquired by a foundation after 1969 cannot be sold to disqualified persons except in certain redemptions by the issuing corporation.[12] Further, even where sales are permitted, the disqualified persons may not have the cash required; much of their wealth is likely to be tied up in illiquid shares.[13] Thus, the foundation is forced to sell what is likely one of its major assets in a limited market against a statutory deadline. The resulting sale will frequently entail a windfall for the private buyer and a large loss of charitable assets.[14]

Section 4943 also inhibits funding of private foundations. Many donors hold their wealth in the stock of closely-held corporations; they are reluctant to make donations knowing a forced sale must follow.[15] It is no answer to suggest that such donors convert their stock into other assets; frequently the income tax ramifications and other consequences of doing so render such action impractical if not impossible. The birthrate of private foundations is thus reduced, contrary to current policy recommendations.[16]

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[10] Kurz, The Private Foundation Provisions: The Purpose and Effect of Sections 4941, 4942, 4943, 31 N.Y.U. Inst. Fed. Tax 1311, 1315 (1972).

[11] S. Rep. No. 938 (Part 2), 94th Cong., 2d Sess., at 94 (1976).

[12] I.R.C. § 4941(d)(1)(A), (2)(F).

[13] See Smith, Planning for Private Foundations Under Section 4943, 60 A.B.A. J. 969, 969 (1974).

[14] Presidential Report at 25; Hasson & Duffney, Are Redemptions of Stock by Private Foundations Being Blocked by Regs?, 40 J. Tax 300, 300 (1974); Kurz, supra.

[15] Summary of H.R. 13270, The Tax Reform Act of 1969 (As Passed by the House of Representatives), Committee Print of the Committee on Finance, 91st Cong., 1st Sess., at 15-16 (1969); Presidential Report at 25.

[16] See Presidential Report at 25, 50-51.

V. The H.E. Butt Foundation

Howard E. Butt, Sr. is the founder of the H. E. Butt Grocery Company, a regional enterprise engaged in the operation of a chain of Texas supermarkets. In the early 1930's, when their business was still relatively small, Mr. Butt and his wife, Mary Holdsworth Butt, established the H. E. Butt Foundation for the purpose of carrying out certain of the Butts' charitable and public endeavors. For the past forty-nine years, the H. E. Butt Foundation has channelled virtually all of its resources into these efforts, and today has a permanent endowment of approximately two million dollars.

Since 1954, the Foundation has aided vast numbers of people through its maintenance of a facility near Kerrville, Texas which provides campgrounds utilized by minority, youth, schools, community, scouting, 4-H, mental health, senior citizens, family and religous groups. More than 18,000 persons were hosted by the Foundation during 1982, and the numbers are steadily increasing.

In addition to its provision of these facilities, the Foundation provides substantial support for Laity Lodge and Christian Men, Inc., two public charities engaged primarily in interdenominational laity oriented family, educational and leadership programs. Each of these organizations also utilizes the Foundation's facilities in the Texas Hill Country, and more than 40 weekend and week long retreats are scheduled each year.

Budgets for the Foundation and the ministries it supports exceed $1.1 million annually. Virtually all of the needed funds are provided by Mr. and Mrs. Butt, their family, and associated entities, a portion is derived from registration fees and gifts from friends, and the balance must be generated through fund raising efforts.

In an effort to ensure the continued viability of the Foundation and its programs, Mr. and Mrs. Butt have since prior to 1969 included in their wills bequests to the Foundation of a substantial amount of the preferred stock of the H. E. Butt Grocery Company. It has been and continues to be their desire to provide the Foundation with an asset base providing a steady and reliable source of income which, after their deaths, would generate revenue in an amount approximating that which they have been able to provide while living.

The preferred stock which is the subject of the Butts' bequests pays a cumulative annual dividend equal to 6% of the par value of the shares. However, because of the rise in interest rates since issuance of the shares, and further because of their limited market, it is estimated that the shares currently have a fair market value of only about 40% of par. Thus, if, because of the application of the divestiture rules, the stock must be sold, then in order to realize an equivalent return to that being given up the Foundation would need to acquire a substitute investment yielding approximately 15%. The concern of Mr. and Mrs. Butt, then, is that the impact of the Foundation's forced sale of the H. E. Butt Grocery Company preferred stock, and its inability to secure an equivalent return through investment of the proceeds, will be to greatly diminish the Foundation's continued abilities to carry on its public and charitable endeavors.

VI. Options for Improvement

Several options exist for improving the excess business holdings rule. Optimally, the provisions of Section 4943 should be repealed in their entirety. A combination of the remaining rules enacted in 1969 (the prohibitions against self-dealing, the minimum distribution requirements, and the tax on investments which jeopardize the charitable purpose), federal and state securities laws, and general concepts of corporate and fiduciary responsibility, serve to eliminate virtually all potential for the abuses perceived as problems prior to 1969, and thus the provisions of Section 4943 unnecessarily burden foundations at no perceptible gain to charity or the public good.

Total repeal of the restrictions on excess business holdings appears to be indicated; however, at a minimum the divestiture rules should be modified to lessen the chilling effect they currently impose upon charitable giving. The suggestions outlined below would attempt to accomplish this by tailoring the Section 4943 tax in accordance with the following three objectives:

1) Encourage the birth and funding of private foundations. In particular, extend a reasonable opportunity to create foundations to donors whose wealth consists of closely-held stock.

2) Do not corner private foundations into making distress sales of securities that have no outside market.

3) Yet, do not undermine the three reasons given for the enactment of Section 4943: misuse to preserve control, diversion from charitable mission, and potential unfair competition.

A. Allow Private Foundations to Hold Nonvoting Preferred Stock.

Excluding nonvoting preferred stock from the computation of excess business holdings would allow owners of closely-held corporations to make substantial gifts to private foundations. Generally, there is no outside market for the preferred shares of such corporations, so Section 4943 inhibits such funding. Yet, gifts of preferred stock do not threaten the abuses that Section 4943 was enacted to prevent. Because the shares are nonvoting, they do not contribute to control of the enterprise. Because the payout is fixed, the shares will produce a steady stream of income for charity. The private foundation would have no managerial power, and its fortunes would ordinarily not gyrate with the success of the enterprise. Nonvoting preferred is really a passive holding, and thus outside the logical scope of Section 4943.[17] Finally, because the preferred stock dividend is fixed, the tax-exempt status of the holder affords no unfair advantage to the issuing corporation.

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[17] Cf. S. Rep. No. 552, 91st Cong., 1st Sess., at 41 (1969) (reprinted in 1969-3 C.B. 423, 459) (passive investments generally are not "business holdings").

B. Expand Section 101(l)(2)(B) to Facilitate Sales of Excess Business Holdings to Disqualified Persons.

The exception to the self-dealing rules enacted as Section 101(l)(2)(B) of the 1969 Act is inadequate in at least two respects. First, only old holdings may be sold to disqualified persons other than the issuer. Second, sales to any disqualified persons can only be for cash; the self-dealing rules have prohibited extensions of credit since 1979, when the limited exception offered by Section 101(l)(2)(C) expired.[18] In fact, the exception expired before private foundations had received many pre-1969 bequests, thus frustrating Congress' intent to smooth the disposition of such bequests. The net result of these inadequacies is that many potential donors choose to forego making gifts to foundations altogether, or to make substantially reduced gifts, and thus charity is made to suffer a loss of major proportion.

As noted above, there is often no market for private foundation holdings outside of disqualified persons. This is especially true, for example, where the private foundation holds nonvoting common or preferred stock. Further, besides the potential for financial loss to charity, forcing the sale of controlling blocks of stock can threaten communities that depend on local enterprises.[19] The disqualified persons may not be able to purchase the shares for cash. The corporation may be damaged by such a cash drain, and the wealth of other disqualified persons is likely to be illiquid.

Of course, adequate safeguards should be imposed by the Secretary to ensure scrupulous fairness. For example, sales could be prohibited without expert independent appraisals of value.[20] For credit sales, the installment terms can be regulated as provided by Section 503(b) and Treas. Reg. 52.4941(d)-4(c). Further, a statutory or floating interest rate, and a pledge of the stock as security, might be required.

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[18] See Treas. Reg. 52.4941(d)-(4)(c) (restating Section 101(1)(2)(C)).

[19] See Summary of H.R. 13270, supra.

[20] See, e.g., Continental Water Co. v. United States, 49 A.F.T.R.2d 82-1070 (Ct. Cl. Judge), adopted Per Curiam 50 A.F.T.R.2d 82-5128 (Ct. Cl. 1982).

C. Allow Holdings to be Retained Where the Foundation Demonstrates the Absence of Abuse.

There is no need to require divestiture by a private foundation that can demonstrate ascertainable factors that dispel any taint. The current "per se" violations of the excess business holdings rules could be converted into a presumption, which could be expressly made rebuttable if the foundation could demonstrate to the Secretary some or all of the following:

1) The shares do not carry significant control, for example, because the shares are nonvoting.

2) The shares are of a type not readily saleable to outsiders except at a bargain price. Small minority interests and preferred stock with limited rights would meet this requirement.

3) The private foundation is not involved in the management of the enterprise.

4) The shares provide steady income for charitable use. For example, the private foundation might be required to demonstrate that the shares generate at least the "minimum investment return" then mandated by Section 4942(e) in 4 of every 5 years.

D. Extend the 5-year Divestiture Period for Stock Acquired by Post-1969 Gifts or Bequests.

The problems inherent in such dispositions "under the gun" were discussed above. Provisions for more orderly divestiture similar to those which are currently before the Senate in S. 562 would at least to a limited extent encourage charitable giving and help to prevent at least some of the loss of assets that have been irrevocably committed to charitable purposes.

Mr. GUARINI. Thank you very much, Mr. Hughes.

You have common stock in your foundation as well as preferred stock?

Mr. HUGHES. No, Mr. Chairman, we do not. We do not have the preferred stock at this time. It is in grandfather provisions in Mr. and Mrs. Butt's wills. So it will not come into play until the deaths of the two principal benefactors of this foundation.

Mr. GUARINI. One has died and the other has not?

Mr. HUGHES. Neither has died. They are both living.

Mr. GUARINI. I see.

Now, Mr. Pickle had asked me to put this on the record so that you would perhaps have an opportunity of stressing your point. You made a point that should Congress not repeal the excise business investor provision, preferred stock held by a foundations should receive different treatment.

Mr. HUGHES. That is right.

Mr. GUARINI. Would you expand on why this is so important?

Mr. HUGHES. Well, Mr. Chairman, if the perceived abuses still persist—that is, that it is possible that the ownership by a foundation of a corporation's stock would give an opportunity for an unfair advantage—or if it is perceived that foundation managers would be involved in the operation of the business—preferred stock does not present these problems.

Mr. GUARINI. You have no voting rights?

Mr. HUGHES. No.

Mr. GUARINI. You have no incommon officers or directors?

Mr. HUGHES. Yes, indeed, we do. There are certain members of the family who are in both organizations; the active member of the foundation has been primarily Mrs. H. E. Butt, who has never been a corporate officer or director of the H. E. Butt Grocery Co.——

Mr. GUARINI. They have a right to set the dividends of the corporation and the determination of, according to the assets, what the dividends should be?

Mr. HUGHES. That is true with respect to common stock. However, the preferred stock has a 6-percent dividend rate which is a cumulative dividend, and it is paid regardless of whether there is a dividend on the common stock.

Mr. GUARINI. Do you have other stock in your porfolios?

Mr. HUGHES. No, Mr. Chairman. Well, we have certain investments. The primary endowment of the foundation will arise upon the deaths of Mr. and Mrs. Butt. Currently, it spends all of its income on current charitable activities. It has had some endowment that it has been able to keep, but its endowment is only $2 million now and, as I said, it expends $1,100,000 annually—it expended that much in 1982 for its charitable purposes.

Mr. GUARINI. Is that all the income that would be received—6 percent on the stock? Would that be considered a proper investment or—not proper, but would that be considered adequate on that return?

Mr. HUGHES. That return, based on the current fair market value of the stock as our investment advisers tell us, is the equivalent of about a 15-percent return, because the fair market value—because of the fact we are dealing with preferred stock—is only approximately 40 percent of its face amount, and the face amount is the basis upon while the 6-percent dividend is paid.

Mr. GUARINI. This is not a traded corporation, is it? Is this a public corporation?

Mr. HUGHES. No, Mr. Chairman.

Mr. GUARINI. So that there is no one to sell it to?

Mr. HUGHES. There is no one to sell it to. But if the company were to buy it back at fair market value, the repurchase price would be inthe range of 40 percent of the face, which would mean we would have to replace that particular asset with one that yielded 15 percent to be on the same level we were prior to the divestiture.

Mr. GUARINI. Thank you very much, Mr. Hughes.

Mr. Hybl, Mr. Kogovsek was very interested in your presenting your case. There is just one concern that we have. I understand that the Broadmoor Hotel is very important to the State of Colorado and it is a landmark.

Now, the emphasis, I understand, is on your future plans, on the future of the hotel and its position that it enjoys as being a landmark in Colorado. Should the emphasis on the foundations be charitable purposes or should they be the emphasis on maintaining the hotel so that the State could enjoy the reputation and prestige of the hotel?

Mr. HYBL. Mr. Chairman, that question deserves really two answers.

Mr. GUARINI. You have an opportunity to put it on the record. That is why I ask it.

Mr. HYBL. Mr. Chairman, the primary emphasis for all who are trustees of the foundation is the charitable purpose, which takes two forms: The distribution of grants for good througout the State of Colorado; and also to insure that the investments which are held by the foundation are of such a nature and character that they produce the highest possible return for charity.

I indicated earlier that 80 percent of our assets are in stocks and bonds, principally equities, with something under 20 percent involved with the Broadmoor Hotel. The Broadmoor Hotel is principally a hotel/real estate holding, having 2,000 acres of land. The return received from the hotel is excellent. For this reason the hotel has been a good investment for the foundation. Trustees' fiduciary responsibility is really the controlling question and the reason that this company has not been divested and 11 others have.

Mr. GUARINI. Would operating a hotel comply with the prudent man rule on investments for foundations, in your opinion?

Mr. HYBL. I think there is no question that it does, Mr. Chairman. We look at this investment as we do holdings in IBM or Exxon. The fact is there is separate professional management which runs the hotel. Operating the foundation is my job; not the running of the hotel.

Mr. GUARINI. Does it throw off as good a percentage as return you get from other stocks in the portfolio?

Mr. HYBL. The hotel has a better total return.

Mr. GUARINI. What percentage is that?

Mr. Hybl. This will vary from year to year. But it is between 6 and 9 percent.

Mr. Guarini. Are you arm's length as far as officers and directors are concerned, or are they interlocking?

Mr. Hybl. They are not interlocking. As I recall, there are two officers of the hotel that are also trustees of the foundation. One of them sits in the chairman's position. People who have actual operational control are not involved with the foundation in any way.

Mr. Guarini. Thank you very much.

Mr. Brown, you say your shares were not marketable and, for that reason, you didn't want to divest yourselves in them; that there was no one to sell them to.

Mr. Brown. Although we are a small company by national standards, we are large companies with special types of operations for Wenatchee—large, by Wenatchee standards. Although the trustees have not made active efforts to sell, it is believed that the assets would have to sold rather than the stock——

Mr. Guarini. Why was no attempt made to divest yourselves after the 1969 law was passed and had indicated that you should, and why has time run out and you have made no attempt to divest?

Mr. Brown. The trustee in 1970 devised a method of distributing—I should say it another way. Since we have named beneficiaries specifically designated in the area, the trustee devised a possible solution by distributing stock to the beneficiaries in order to reduce the ownership of the foundation below the required levels. And a distribution of slightly over 20 percent was carried out in 1970 to avoid the unrelated business income tax which that law also changed in that year to effect rents received from buildings owned by the foundation that the companies were renting. So this plan was considered a possible solution to this 50-percent limit that would hit in 1989.

Now, in the years thereafter, the attorney general of the State of Washington pointed out that since nine of our beneficiaries were public hospital districts, they couldn't own stock. So we ran into that problem. So we have first and second class beneficiaries if we continue.

That has presented a problem that has not been solved yet as we get down toward 1989.

Mr. Guarini. Do you have any grassroots efforts to minority groups or small people that seek loans, or do most of your grants go to hospital and health care?

Mr. Brown. The will is specific. It says all the income would be distributed to five named social agencies and all nonprofit hospitals in north central Washington. So we have no—the trustee has no leeway in considering other grant applications.

Mr. Guarini. Then you have no administrative expenses to speak of?

Mr. Brown. Just the trustee fee for managing the trust. There is no paid board or anything.

Mr. Guarini. How large is your trust? How much do you give out every year?

Mr. Brown. The 1982 report was about $9 million, net asset value.

Mr. GUARINI. That is what you distributed?

Mr. BROWN. No. No. That was the asset value. The distribution in the spring of 1983 was $275,000.

Mr. GUARINI. On $9 million. So that is approximately what percentage?

Mr. BROWN. We have a schedule attached to the statement. The brochure gives the specific figures off the 990-PF. I was referring to the 1983 distribution.

The 1982 distribution represented 2.94 percent of the net asset value. The same schedule shows that has been climbing rapidly in the last 3 years.

Mr. GUARINI. You gave 2. what percent?

Mr. BROWN. That was the distribution in 1982, 2.9 percent.

Mr. GUARINI. And is that the largest distribution?

Mr. BROWN. No, sir.

Mr. GUARINI. You say it is rising rapidly?

Mr. BROWN. I said, yes, our distributions have been rising; but our net asset value has been rising rapidly.

Mr. GUARINI. How are your distributions going now?

Mr. BROWN. We have a schedule in the record. Would you like me to read some?

Mr. GUARINI. No; just for the last 3 years.

Mr. BROWN. $211,000, $237,000, $259,000.

Mr. GUARINI. In each case, you are under 3 percent of your assets that you distributed? How much are your administrative expenses? This is for the $200,000 distribution.

Mr. BROWN. I don't have a schedule of that here. That is a percentage. The Seattle First National Bank is the trustee.

Mr. GUARINI. I didn't ask that.

I want to get it on the record: How much are the administrative expenses of your foundation?

Mr. BROWN. In 1982?

Mr. GUARINI. Yes.

Mr. BROWN. I don't have it in front of me. I could guess at it.

Mr. GUARINI. I don't ask you to guess.

Mr. BROWN. I am sorry. I just——

Mr. GUARINI. You are the president of the Wells & Wade Fruit Co?

Mr. BROWN. Yes, sir.

Mr. GUARINI. Right. And this foundation is under your jurisdiction and supervision, is it not?

Mr. BROWN. No, sir. We are the principal asset. It is under the—the trustee is the Seattle First National Bank. Mr. Smith is in charge of it.

Mr. GUARINI. Would you give us an estimation as to what the administative expenses are?

Mr. SMITH. I would estimate they are approximately $40,000 a year. But I do that from memory.

Mr. GUARINI. So out of a $9 million asset, you distribute under 3 percent or $259,000, of which about $40,000, about 20 percent, is administrative expenses?

Mr. SMITH. The fees would be before the $259,000. And then before December 31 of 1983, this distribution will be stepped up to 5 percent of the asset value.

Mr. **Guarini**. I hope so.

Mr. **Smith**. In prior years, we raised the asset value—approximately $3 million this year, I believe.

Mr. **Guarini**. It seems just offhand that 20-percent adminstration expenses, where you only have five hospitals without any other grants, to be a rather high fee that the bank is taking just to administer paperwork. That is just a personal opinion. I just want you to know that I think that the foundations are for charitable purposes and not for the benefit of the stock of the corporation. There is a responsibility that all of us have on both sides of the table here in order to get the best benefit we are able for the charities that the corporations are supposed to be assisting.

Do you want anything else on the record, Mr. Brown?

Mr. **Brown**. No, sir, except to say that I might say as my testimony stated, our assets did not change, just the valuation of them by county tax officials, and this kind of thing is what happened.

Mr. **Guarini**. Thank you.

Mr. Frenzel.

Mr. **Frenzel**. No questions, Mr. Chairman.

Mr. **Guarini**. I thank you very much, gentleman, Mr. Hybl, Mr. Brown, Mr. Smith, Mr. Hughes. We appreciate your appearance. Anything you wish to submit will be put into the official record.

We will now welcome Mr. Robert J. Reardon, trustee of the Otto Bremer Foundation; Mr. Eugene T. Rossides, Morris and Gwendolyn Cafritz Foundation; and Mr. James E. Weger of the Hauss-Helms Foundation.

I will ask Mr. Frenzel if he wishes to introduce somebody on the panel.

Mr. **Frenzel**. Thank you, Mr. Chairman. I am pleased to introduce Mr. Reardon, trustee of the Otto Bremer Foundation. I simply want to assure the chairman that this is not his first trip up here, but I sure hope it is getting to be his last. His foundation is headquartered in St. Paul, Minn. The representative of that area is our colleague, Bruce Vento, who has been supportive of his problems.

I am not going to steal his thunder of his presentation, but basically he is caught between two differing laws, one which tells him to do something, and the other one which tells him he cannot do it. I think you will be very interested in his presentation. I thank you, Mr. Chairman.

Mr. **Guarini**. Mr. Reardon, you were introduced by one of our finest Members of the House, and I want to welcome Mr. Sherman Winthrop, your counsel, I understand who is with you.

STATEMENT OF ROBERT J. REARDON, TRUSTEE, OTTO BREMER FOUNDATION, ACCOMPANIED BY SHERMAN WINTHROP, COUNSEL

Mr. **Reardon**. Thank you for the opportunity to appear in support of H.R. 2399. Mr. Frenzel, thank you for your nice comments.

I am Robert Reardon, St. Paul, Minn. I am a trustee of the Otto Bremer Foundation, a private charitable foundation located in St. Paul, Minn. With me is Sherman Winthrop, our counsel.

I would like to summarize our written statement which has been presented in support of H.R. 2399. We do want to emphasize that we are not seeking to avoid divestiture as provided in section 4943. The proposed legislation will merely eliminate an ambiguity that prevents any kind of orderly divestiture. The proposed legislation does not provide for an extension of time within which to divest, nor would it exempt the foundation from any provision of the Tax Reform Act of 1969. We intend to divest according to the present timetable of 4943.

The foundation on May 26, 1969 owned 100 percent of the stock of the Otto Bremer Co., a multiple-State-registered bank holding company owning banks located in rural areas of Minnesota, Wisconsin, and North Dakota. We are subject to all the provisions of the Bank Holding Company Act and other banking laws as well as the provisions of chapter 42 of the Internal Revenue Code.

At great length we have explored the possibility of selling the Otto Bremer Co. in order to comply with 4943. Because of antitrust considerations, the McFadden Act, a lack of interest from foreign buyers, and other reasons detailed in our written statement, we have not been able to sell the company. The only practical matter of divestiture would be by public sale of stock of the Otto Bremer Co. However, the stock cannot be sold even at public offering because of the ambiguity existing under section 4943 as to whether or not the company is an active business enterprise. This problem would have been eliminated by regulations announced in 1979 but never issued. We are unable to divest because of the continued ambiguity under 4943 of whether or not divestiture requires looking through the Otto Bremer Co.; and, second, whether or not the company is a business enterprise.

No investor would want stock in a bank holding company which would be required to sell off its banks, nor would an investor want stock in a bank holding company that cannot carry on the normal activities permissible to any other bank holding company.

In conclusion, Mr. Chairman, H.R. 2399 and its companion bill in the Senate, S. 977, clarifies and eliminates the ambiguity of looking through the Otto Bremer Co. and defines the Otto Bremer Co. as a business enterprise. This in turn makes the stock of the company marketable in a public offering. Again, we want to emphasize the legislation does not provide for extension of time within which to divest, nor does it in any way seek to exempt the foundation from any of the provisions of the Tax Reform Act of 1969. It merely gives us a means failing all other methods to divest in an orderly manner as required. For these reasons we respectfully request your support of the proposed legislation, H.R. 2399.

Thank you.

Mr. GUARINI. Thank you very much, Mr. Reardon.

[The prepared statement follows:]

STATEMENT OF ROBERT J. REARDON, TRUSTEE, OTTO BREMER FOUNDATION, SAINT PAUL, MINN.

Gentlemen: We are intending to appear before your Subcommittee at the hearings to be held on June 27, 28 and 30, 1983, for the purpose of examining the rules governing private foundations.

While the Otto Bremer Foundation (the "Foundation") is vitally interested in all of the various rules governing private foundations provided under the Tax Reform

Act of 1969, rather than commenting in general terms with respect to those rules, we felt it would be more helpful to your Subcommittee to set forth the special problems that the Foundation faces under Section 4943 of the Internal Revenue Code as a private foundation with bank and related holdings.

At the present time, the Foundation is faced with a divestiture problem arising under Section 4943 ("4943"). Because of an apparent ambiguity under 4943 and the resulting adverse affect on the Foundation, the Foundation has requested legislation to clarify this particular ambiguity under 4943. In that connection, H.R. 2399 and S. 977 have recently been introduced in the U.S. House of Representatives and Senate respectively.

Our appearance on behalf of the Foundation is for the purpose of seeking support for H.R. 2399 and S. 977 which would allow the Foundation to divest in accordance with the provisions of 4943. The Foundation is not seeking to avoid divestiture. The purpose of the proposed legislation is simply to eliminate an ambiguity that prevents any kind of orderly divestiture. It is also to be noted that the enactment of the proposed legislation would not relieve or reduce any past, present, or future tax liability of the Foundation and would not result in the loss of any tax revenue.

By way of background, the Foundation is a priviate foundation and a bank holding company. The Foundation is the sole shareholder of the Otto Bremer Company (the "Company") which is also a multi-state bank holding company. The Company owns majority control of 29 banks and 39 bank related companies, all of which are located generally in rural areas of the three states of Minnesota, Wisconsin and North Dakota.

The Foundation is the only private foundation in the United States which is also a multiple state registered bank holding company. The Foundation is classified as a private foundation for purposes of Chapter 42 of the Internal Revenue Code (the "Code") and is thus subject to the special rules imposed upon private foundations by the Tax Reform Act of 1969 as well as all of the provisions of the Bank Holding Company Act of 1956.

The affairs of the Foundation are administered by three individual trustees, William Lipschultz, Gordon Shepard and Robert J. Reardon. None of the three trustees has ever been a contributor to the Foundation, none of the trustees owns any stock in any related corporations (other than directors' qualifying shares), and none of the trustees nor any members of their families are related to the sole grantor of the Foundation, Otto Bremer, or to any members of the Otto Bremer family.

The Foundation presently faces a problem with respect to the divestiture of possible excess business holdings. Not only is the Foundation subject to the private foundation rules under the code, but both the Foundation and its wholly owned subsidiary, the Company, are subject to extensive regulation and control by the Federal Reserve Board, the Comptroller of the Currency, the FDIC, and the various state banking commissions. The Foundation and the Company are also subject to the provisions of the Bank Holding Company Act of 1956 and the Change in Bank Control Act of 1978.

The Foundation's Trustees have at great length explored the possibility of selling the Company in order to comply with 4943 but have determined that, as a practical matter, the Company is not salable. Because of antitrust considerations, the two largest bank holding companies in the Ninth Federal Reserve District are not in a position to acquire the banks owned by the Company. No other existing bank holding company in the Ninth Federal Reserve District has sufficient financial resources to acquire the company or any significant portion of its assets. Bank holding companies outside the Ninth Federal Reserve District are prevented from acquiring the banks as a system or individually due to the fact that by statute, multi-state bank holding companies may only acquire banks in their state of domicile or where the majority of their banks are located. Also, under Federal banking laws, non-banking corporations have substantial restrictions imposed upon them with respect to acquiring banks and bank-related companies. Foreign investors have not been interested in acquiring the Company because of the fact its banks are not located in the "sunbelt" growth areas or in a major money market center.

Because of the foregoing considerations, the Trustees of the Foundation have determined that the only feasible means of divestiture would be by a public sale of the stock of the Company by means of primary and secondary stock offerings thereby reducing the Foundation's percentage ownership to that required by 4943. As a practical matter, the existing ambiguity under 4943 prevents a public sale.

4943 requires private foundations to reduce their holdings in business enterprises held on May 26, 1969, to certain reduced percentages over a period of time. For example, the Foundation, as the owner of 100 percent of the Company (assuming the

Company is in fact a business enterprise), would have to reduce that percentage ownership to 50 percent by May 26, 1989.

The ambiguity raised by 4943 arises because the Foundation (defined as a Qualified Private Foundation" in the proposed legisltion) owns 100 percent of the Company (defined as a "Qualified Bank Holding Company" in the proposed legislation) which in turn owns varying percentages of different banks and bank-related companies. The question raised is whether, under the divestiture rules, the ownership interest of the Foundation in the Company is determinative of the divestiture period or whether you must "look through" the Company to the various percentages of ownership held by it in its subsidiary banks and bank-related companies in order to determine the applicable divestiture period. Requiring the Foundation to "look through" the Company would prevent the Company from operating in the same manner as other publicly held bank holding companies.

In 1973, regulations were proposed by the Treasury Department under 4943 which, in essence, provided that you would not "look through" an active business enterprise owned by a private foundation. The 1973 regulations were subsequently withdrawn, and in 1979, new regulations were proposed under 4943 which would have required "looking through" a business enterprise owned by a private foundation. The proposed 1979 regulations were strongly opposed and were not implemented. In the fall of 1979 Treasury issued a statement indicating that the provisions of the proposed 1973 regulations which provided for not "looking through" active business enterprises would be incorporated into the final regulations to be issued under 4943. To date, however, final regulations under 4943 have still not as yet been issued.

The lack of final regulations under 4943 has left the Foundation in a position in which it is unable to proceed with its 4943 divestiture requirements. As a practical matter, it would be impossible to sell the Company's stock in the public market without a determination of the applicable divestiture period as well as the assurance that the Company, as a publicly held company, could acquire or form business enterprises in the normal course of its banking operations. The proposed bill simply clarifies the existing ambiguity with respect to the "look-through" issue to provide that in a situation such as that of the Foundation, its ownership interest in the Company would be determinative of the appropriate divestiture period.

A related ambiguity under 4943 is the active-passive aspects with respect to the definition of a "business enterprise," particularly in the case of a bank holding company. Because of the requirements of the Bank Holding Company Act of 1956 and other regulatory laws, substantially all of the direct revenue producing activities of the Company are conducted by its subsidiary banks and bank-related companies rather than by the Company itself. This, of course, is the normal manner in which bank holding companies operate and is consistent with the fact that a bank holding company is essential to an integrated banking system. In recognition of that fact, the proposed bill provides that for the purpose of defining a "business enterprise" under 4943, a "Qualified Private Foundation" would not be treated differently than any other private foundation simply because its wholly owned subsidiary is forced to operate its business under a holding company structure.

In summary, the proposed legislation addresses the concerns discussed above in the following manner:

1. A "Qualified Bank Holding Company" would be deemed to be a "business enterprise" for purposes of 4943 if 50% or more of its gross income is derived from activities carried on by it or by banks or bank-related companies in which it owns majority control.

2. In the case of a "Qualified Private Foundation," its ownership interest in a "Qualified Bank Holding Company" would be deemed determinative of the applicable divestiture period under 4943.

The proposed legislation does not provide for an extension of time within which to divest nor does it in any way seek to exempt the Foundation from the provisions of the Tax Reform Act of 1969. In our view, the enactment of the proposed legislation would be consistent with the statutory objectives of the Tax Reform Act of 1969 in providing for an orderly disposition of excess business holdings under 4943. The enactment of this legislation would enable the Foundation to proceed in an orderly manner with its plan of divestiture through a public offering of the stock of the Company. The end result would be that the Foundation would, in fact, be able to meet its divestiture requirements under 4943 within the prescribed period while at the same time its ability to make charitable distributions would be substantially enhanced.

It is for the reasons stated above that the Foundation respectfully requests your support of the legislation proposed as H.R. 2399 and S. 977.

If you have any questions or desire any additional information relative to the matters set forth above, please do not hesitate to ask.

Mr. GUARINI. Mr. Rossides.

STATEMENT OF EUGENE T. ROSSIDES, COUNSEL, MORRIS AND GWENDOLYN CAFRITZ FOUNDATION

Mr. ROSSIDES. Thank you, Mr. Chairman. We represent the Morris and Gwendolyn Cafritz Foundation, Mr. Chairman, which is the largest foundation serving the Washington, D.C., area. Our problem is a technical one in the disparity on transition rules for pre-act holdings.

If the foundation owns 75 percent of the stock together with a disqualified person they receive 15 years to reduce their holdings to 50 percent, whereas if the private foundation owned more than 95 percent of the stock it was given 20 years to reduce its holdings. The 20-year period was added in conference presumably because Congress recognized that it would be difficult to reduce a holding as large as 95 percent to 50 percent within the 15-year period allowed for 75-percent holdings.

There is no explanation in the legislative history why holdings of the foundation and disqualified persons are aggregated for purposes of the 75-percent stock interest—15-year transition period—but not for the 95-percent stock interest—20-year transition period. Moreover, Mr. Chairman, this disparity in treatment is inconsistent with the underlying purpose of the 20-year provision, since it is more difficult to dispose of a large block of stock where the stock is not under the exclusive control of the private foundation but rather is shared with a disqualified person.

The disparity impacts the Cafritz Foundation because, while it and a marital trust—a disqualified person—received 100 percent of the stock of a company from a testator who died in 1964, under existing law their holdings cannot be aggregated so as to qualify for the 95-percent, 20-year transition period. The problem is compounded by the fact that the trust is subject to fiduciary restraints upon the sale of its stock.

Unless this disparity is corrected, the Cafritz Foundation will be required to sell—probably at a very substantial loss—most of its two-thirds stock interest in the Cafritz Co., a management company which efficiently manages and conserves the foundation's widespread passive real estate holdings.

Attached is a memorandum which fully describes the severe problems the Cafritz Foundation faces and proposes a conforming amendment that will eliminate the disparity.

I would like briefly to emphasize the following points:

One. The proposed conforming amendment will correct an unexplained disparity and inconsistency in the transition rules for disposition of excess business holdings of a private foundation.

Two. The proposed amendment is consistent with the purpose of the 20-year transition period which is to permit orderly disposition of preexisting holdings of 95 percent or more of a stock.

Three. The proposed amendment will alleviate the substantial hardship to the Cafritz Foundation which would be created by an immediate forced sale of substantially all its stock in a company that effectively manages the foundation's widespread passive real estate holdings.

Four. The proposed amendment would have no revenue effect nor would it give rise to any of the abuses which the statute was intended to rectify. Rather, it will allow the largest private foundation serving the metropolitan Washington, D.C., area to continue to preserve and protect its passive investments and continue its substantial grants to the community without contravening the intent of section 4943 of the Internal Revenue Code.

I believe I would say that we support repeal of the 4943. We feel the emphasis should be on payout and not divestiture. We feel divestiture has damaged charitable giving and has generally depersonalized charitable giving as has been so well expressed here this afternoon.

Of course, you have the time constraints and we would support as was suggested earlier in respect to them, a statutory 5-year, across-the-board exemption for foundations faced with the divestiture problem, Mr. Chairman.

Thank you very much.

Mr. GUARINI. Thank you, Mr. Rossides.

[The prepared statement follows:]

STATEMENT OF EUGENE T. ROSSIDES ON BEHALF OF THE MORRIS AND GWENDOLYN CAFRITZ FOUNDATION

Mr. Chairman and Members of the Subcommittee, my name is Eugene T. Rossides. I am a partner in the law firm of Rogers & Wells and am here to testify on behalf of the Morris and Gwendolyn Cafritz Foundation, which is the largest private foundation serving the Washington Metropolitan Area.

In order to prevent abuses by exempt organizations, Section 4943 of the Internal Revenue Code imposes a prohibitive excise tax on excess business holdings of a private foundation. Special transition rules apply to large holdings that existed as of May 26, 1969.

The Cafritz Foundation requests correction of a disparity and inconsistency in the transition rules. Under existing law if a private foundation and disqualified persons owned more than 7 percent of the stock of a business enterprise in 1969, they were given fifteen years to reduce their holdings to 50 percent, whereas if a private foundation owned more than 95 percent of the stock, it was given twenty years to reduce its holdings to 50 percent. The twenty-year transition period was added in conference presumably because Congress recognized that it would be difficult to reduce a holding as large as 95 percent to 50 percent within the fifteen-year period allowed for 75 percent holdings.

There is no explanation in the legislative history why holdings of the foundation and disqualified persons are aggregated for purposes of the 75 percent stock interest—15-year transition period—but not for the 95 percent stock interest—20-year transition period. Moreover, this disparity in treatment is inconsistent with the underlying purpose of the twenty-year provision since it is more difficult to dispose of a large block of stock where the stock is not under the exclusive control of the private foundation but rather is shared with a disqualified person.

Congress should correct this unexplained disparity and inconsistency in the transition rules for pre-Act foundation holdings which will have a severe, unintended, and unwarranted impact on the Cafritz Foundation.

The disparity impacts the Cafritz foundation because, while it and a marital trust (a disqualified person) received 100 percent of the stock of a company from a testator who died in 1964, under existing law their holdings cannot be aggregated so as to qualify for the 95 percent twenty-year transition period. The problem is compounded by the fact that the trust is subject to fiduciary restraints upon the sale of its stock.

Unless this disparity is corrected, the Cafritz Foundation will be required to sell—probably at a very substantial loss—most of its two-thirds stock interest in the Cafritz Company, a management company which efficiently manages and conserves the Foundation's widespread passive real estate holdings.

Attached is a memorandum which fully describes the severe problems the Cafritz Foundation faces and proposes a conforming amendment that will eliminate the disparity.

I would like briefly to emphasize the following points:

(1) The proposed conforming amendment will correct an unexplained disparity and inconsistency in the transition rules for disposition of excess business holdings of a private foundation.

(2) The proposed amendment is consistent with the purpose of the twenty-year transition period which is to permit orderly disposition of pre-existing holdings of 95 percent or more of a stock.

(3) The proposed amendment will alleviate the substantial hardship to the Cafritz Foundation which would be created by an immediate forced sale of substantially all of its stock in a company that effectively manages the Foundation's widespread passive real estate holdings.

(4) The proposed amendment would have no revenue effect nor would it give rise to any of the abuses which the statute was intended to rectify. Rather, it will allow the largest private foundation serving the metropolitan Washington, D.C. area to continue to preserve and protect its passive investments and continue its substantial grants to the community without contravening the intent of Section 4943 of the Internal Revenue Code.

Thank you, Mr. Chairman and Members of the Subcommittee.

SUBMISSION OF THE MORRIS & GWENDOLYN CAFRITZ FOUNDATION

This memorandum is submitted on behalf of the Morris and Gwendolyn Cafritz Foundation which is the largest private foundation serving the Washington Metropolitan Area. Since it was founded in 1948, the Cafritz Foundation has made grants totalling over $26 million to many worthwhile organizations active in the arts and humanities, community services, education and health.

The Foundation is a major supporter of The National Symphony, The Corcoran Art Gallery, The Capital Children's Museum, Arena Stage, The National Park Foundation, The Kennedy Center, Ford's Theater, WETA, The Folger Theater, The Washington Opera, Columbia Hospital for Women, the Visiting Nurse Association, the American Red Cross, Gallaudet College, local universities and schools, and many other organizations. All grant requests are reviewed and approved by a panel of 12 distinguished citizens including the Secretary of The Smithsonian Institution, the Director of the National Gallery, and The Librarian of Congress.

In order to prevent abuses by exempt organizations, Section 4943 of the Internal Revenue Code imposes a prohibitive excise tax on excess business holdings of a private foundation. Special transition rules apply to large holdings that existed as of May 26, 1969.

The Cafritz Foundation requests correction of a disparity and inconsistency in the transition rules whereby the holdings of the private foundation and disqualified persons are aggregated for the 75 percent stock interest—fifteen-year transition period—but not for the 95 percent stock interest—twenty-year transition period.

The transition periods are set forth in Section 4943(c)(4)(B) as follows:

"(B) Any interest in a business enterprise which a private foundation holds on May 26, 1969, if the private foundation on such date has excess business holdings, shall (while held by the foundation) be treated as held by a disqualified person (rather than by the private foundation)—

"(i) during the 20-year period beginning on such date, if the private foundation has more than a 95 percent voting stock interest on such date,

"(ii) except as provided in clause (i), during the 15-year period beginning on such date, if the foundation and all disqualified persons have more than a 75 percent voting stock interest (or more than a 75 percent profits or beneficial interest in the case of any unincorporated enterprise) on such date or more than a 75 percent interest in the value of all outstanding shares of all classes of stock (or more than a 75 percent capital interest in the case of a partnership or joint venture) on such date * * *" (Emphasis added)

The Cafritz Foundation requests that the two subsections be conformed by adding the following underscored language to Subsection (i):

"(i) during the twenty year period beginning on such date, if the private foundation and all disqualified persons have more than a 95 percent voting stock interest on such date . . ." [1]

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[1] Alternatively, subsection (i) could be conformed so as to track the qualifying language of subsection (ii).

The effect of the amendment would be to extend for five years, until May 26, 1989, the time within which the Cafritz Foundation must dispose of its remaining excess business holdings.

Unless Section 4943 is amended as proposed—or there is some other provision for a five-year extension for disposal of excess business holdings of private foundations generally—Section 4943 will have a harsh impact upon the Cafritz Foundation, i.e., by May 26, 1984, the Cafritz Foundation, must sell—probably at a substantial loss—most of its two-thirds stock interest in the Cafritz Company, a management Company which efficiently manages and conserves the Foundation's widespread real estate holdings.

THE CAFRITZ FOUNDATION HOLDINGS

The Cafritz Foundation was the principal beneficiary under the will of Morris Cafritz, a major builder in the Wshington area who died in 1964 leaving an estate of very substantial value. Mr. Cafritz' will adopted an estate plan, the effect of which was the distribution of a fractional two-thirds interest in most of Mr. Cafritz' assets to the Cafritz Foundation, with the remaining interest in each asset going to a marital trust. Some five years later, when the Tax Reform Act of 1969 was enacted, the marital trust became a "disqualified person".

Mr. Cafritz' estate included a hotel, a major construction company, a real estate management company and a number of passive real estate investment properties, including office buildings, apartment buildings, warehouses, two small shopping centers, and unimproved land. Since 1969, the hotel has been sold, all construction and development activities have been terminated and several undeveloped or underdeveloped tracts of land have been sold.

The principal remaining asset which falls within the 1969 Act's definition of an "excess business holding" is the Foundation's two-thirds stock interest in the Cafritz Company which primarily manages and conserves the real estate investment properties owned by the Foundation and marital trust.[2] Over 50 percent of the gross management income of the Cafritz Company is derived from management of the properties which passed under the Will of Morris Cafritz. In large part as a result of the Cafritz Company's efficient management of those properties, the Foundation's income and its charitable contibutions have increased significantly through the years.

To maintain economy of scale, the Company manages other properties. The Company enjoys no advangtage in competing for outside business by reason of its being owned by the Foundation. On the contrary, it is required to maximize current earnings which are fully taxed and distributed as dividends.

NO BASIS FOR THE DISPARITY

We have reviewed the legislative history and have not found any explanation why the interests of a private foundation and disqualified persons are aggregated for purposes of qualifying for the 75 percent fifteen-year transition period but not for the 95 percent twenty-year transition period. The fifteen-year period for divestiture in the case of a 75 percent voting interest by a private foundation and all disqualified persons was added by the Senate Finance Committee; it had not appeared in the bill as enacted by the House. In Sen. Rep. No. 91-552, 91th Cong., 1st sess., as reprinted in 1969-3 C.B. 423, 451, the reason for the addition of the fifteen-year period in this situation was explained as follows:

"This modification was provided by the [Senate Finance] Committee because the practical difficulties in disposing of a company's equity are apt to be substantial where the foundation owns the bulk of the company's stock."

The twenty-year period for divestment when the private foundation owns directly more than a 95 percent voting stock interest was added by the Conference Committee without any explanation. See Conf. Rep. No. 91-782, 91st Cong., 1st Sess., as reprinted in 1969-3 C.B. 644, 647.

At the end of the twenty- or fifteen-year first phase, there is a second fifteen-year phase during which the private foundation and all disqualified persons may continue to own in the aggregate no more than a 50 percent interest.[3]

While the legislative history does not refer to the twenty-year first phase transition period, Congress presumably recognized that it would difficult for a private foundation to reduce a holding as large as 95 percent to 50 percent within the fifteen-year period. It is even more difficult, however, to meet the 50 percent second phase holding limit where over 95 percent of a stock is not under the exclusive control of the private foundation, but rather is shared with a disqualified person (in this case a trust).

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[2] The company has an insurance subsidiary, a major activity of which is to obtain insurance for properties owned by the foundation and marital trust.

[3] At the end of the second phase, the combined ownership limit drops to 35 percent.

The trustees of the marital trust ae concerned that they cannot prudently sell its 33⅓ percent stock interest in Cafritz Company. The trust has an interest in retaining ownership of the stock because Cafritz Company effectively manages properties in which the trust has a one-third interest. Also, a minority interest in a closely held real estate management company cannot normally be sold except at less than its proportionate part of the corporation's total fair market value so there would be a likely depletion of trust corpus.

The risk of loss in a sale is particularly high in the current depressed real estate market because the income and, therefore, the value, of a real estate management company is diectly tied to the level of rentals in the properties managed. While Mrs. Cafritz would be willing to consent to such a sale to benefit the Foundation, this would not immunize the trustees from possible liability to remainderman in connection with such a sale.

THE HARM TO THE CAFRITZ FOUNDATION

If the trustees adhere to the standards applicable to a fiduciary and do not sell the trust's Cafritz Company stock, the Foundation will be compelled to dispose of three quarters of its stock in the company by May 26, 1984 leaving the Foundation with only a 16⅔ percent stock interest. The sale must be made to a third party who is not a disqualified person and the Foundation thereafter could not increase its interest in Cafritz Company to more than 20 percent holding.[4]

With such a small remaining minority ownership position, the Foundation will not be assured of a sufficient voice in the new management of the Cafritz Company to protect its interest in seeing that its properties continue to be managed in the same efficient manner.

In such circumstance, it would be unwise for the Foundation to give a binding assurance that it will continue to use the services of the Cafritz Company for any extended period. On the other hand, the Foundation's properties account for such a large portion of the Cafritz Company revenues that ssuch an assurance by the Foundation is necessary to make the Cafritz Company stock marketable at a reasonable price.

Thus, the Cafritz Foundation is not faced merely with being required to sell three quarters of tis Cafritz Company stock in a depressed real estate market; it is also faced with either committing to continued dealing with a management company in which it will have only a small ownership interest—thereby possibly jeopardizing effective supervision of its investment properties—or not making such a commitment and taking an immediate further substantial loss on the sale of its Cafritz Company stock.

If the Foundation had five years to reduce its first phase holdings, it is conceivable that the problem will resolve itself. Upon the demise of the beneficiary of the marital trust, all of the trust's stock in the Cafritz Company could be distributed to the Foundation. The Foundation could then dispose of one-half of the stock with no substantial loss in value because it would then be in a position to give an appropriate assurance as to continued management of its propperties by the Cafritz Company.

NO ADVERSE EFFECT AND NO REVENUE EFFECT

The amendment will have no revenue effect and will not give rise to any abuse the Act sought to prevent. The concern was that if a foundation owns a business it might (a) ignore the production of income to be used for charitable purposes and (b) unfairly compete with other businesses whose owners must pay taxes on the income they realize. See Summary of H.R. 13270, prepared by the Staffs of the Joint Committee on Internal Revenue Taxation and Committee on Finance for Use by the Committee on Finance (91st Cong., 1st Sess., August 18, 1969). As shown above, the Cafritz Foundation has significantly increased its income for charitable purposes in large part through efficient management of its properties by Cafritz Company. Moreover, the Cafritz Company has realized no competitive advantage by reason of its being owned by the Foundation and the marital trust. On the contrary, it has been required to maximize its income, to pay full corporate income taxes on that income and to distribute fully the balance to its shareholders. Finally, the Cafritz Company has not engaged in any borrowing or other financing, directly or indirectly from the Foundation, from which it could increase its bussess base in competition with other real estate management companies.

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[4] Once its holdings are reduced, the Foundation's ownership could not be increased on a permanent basis to more than 20 percent which is the aggregate holdings limit applicable to post 1969 stock acquisitions.

REASONS FOR THE AMENDMENT

1. The proposed amendment will correct an unexplained disparity in the transition rules whereby pre-existing business holding of a private foundation and disqualified persons are aggregated for purpose of the 75 percent fifteen-year transition period but not for the 95 percent twenty-year period.
2. The proposed amendment is consistent with the purpose of the twenty-year transition period. Congress recognized that it would be difficult for a private foundation to reduce a holding as large as 95 percent to 50 percent within the fifteen-year period. It is even more difficult, however, to meet the 50 percent second phase holding limit where over 95 percent of the stock is not under the exclusive control of the private foundation, but rather is shared with a disqualified person (in this case a trust).
3. The proposed amendment will alleviate the substantial hardship to the Cafritz Foundation which would be created by an immediate forced sale of substantially all its stock in a company that effectively manages the Foundation's widespread real estate holdings.
4. The proposed amendment would neither give rise to any of the abuses which the statute was intended to rectify nor have any adverse revenue effect. Rather, it will allow the largest private foundation serving the metropolitan Washington area to continue to preserve and protect its passive investments and continue its substantial grants to the community without contravening the intent of Section 4943 of the Internal Revenue Code.

Mr. **Guarini**. Mr. Weger of the Hauss-Helms Foundation.

STATEMENT OF JAMES E. WEGER, PRESIDENT, THE HAUSS-HELMS FOUNDATION, INC.

Mr. **Weger**. Thank you. I am James E. Weger, president of the Hauss-Helms Foundation, Inc.

The Hauss-Helms Foundation, Inc. was established in 1965—by Mrs. Besse Hauss-Helms and her husband, Walter B. Helms with the principal purpose of aiding students of the Auglaize County-Allen County, Ohio area to continue their education past high school.

The foundation acquired approximately 52 percent of the shares of Telephone Service Co. of Wapakoneta, Ohio, from the estates of Mr. and Mrs. Helms prior to the enactment of the Tax Reform Act of 1969.

Since 1970 the foundation has made educational grants totaling in excess of $1,300,000 to young men and women in the two-county area. The foundation and all disqualified persons now own 50 percent of Telephone Service Co. shares.

The Telephone Service Co. shares have been profitable investments for the foundation returing in 1982 17.08 percent on book value and 7.29 percent on year-end fair market value.

It has growm in value 134 percent in the years we have held it. The Telephone Service Co. furnishes quality telephone service to its subscribers at dramatically low cost. It has had but one rate increase since 1952 but, nevertheless, has remained financially sound and efficient.

That small company returned a profit of $1,581,000 before taxes. The company has been financially sound and efficient and because of the quality of the investment we believe it would be difficult to substitute an investment in the marketplace with that kind of quality.

As far as section 4943 is concerned, none of the abuses which concerned Congress when section 4943 was enacted apply to the foundation's controlling interest in the Telephone Service Co.

None of the trustees of the foundation are members of the creator's family or remotely related to them.

Disqualified persons own 13 shares of the company's 8,400 shares outstanding.

Telephone Service Co. is a publicly regulated monopoly within its franchise area, does not compete against other businesses in its field, operates independently of the foundation and distributes over 49 percent of its after-tax earnings to its shareholders.

During the 95th Congress, the committee on Ways and Means found that none of the conflicts that gave rise to the excess business holdings provision existed in the foundations's ownership of the controlling interest in the Telephone Service Co. and the House of Representatives passed amended H.R. 4030 which would have extended the foundation's period for divestiture but the Senate adjourned without taking action on the legislation.

The charitable purposes of the foundation have not suffered in any way by reason of the ownership of controlling interest in the Telephone Service Co.

Should the foundation be required to divest itself of controlling interest in the Telephone Service Co. the community served by Telephone Service Co. will suffer economically through increased costs to the telephone subscribers.

We believe it to be an excellent investment for the foundation, it has enabled us over the period since we held the stock since 1970, to grant over $1,300,000 in scholarships in a two-county area.

We believe that it is a beneffit to the community for use to be able to retain that investment in the Telephone Service Co. because, if we were forced to sell it, the obvious purchasers would be the larger telephone companies and our surveys in the area show that whenever that happened prior to this telephone rates have increased rather substantially.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF JAMES E. WEGER, PRESIDENT OF THE HAUSS-HELMS FOUNDATION, INC.

Mr. Chairman and Members of the Subcommittee. My name is James E. Weger. I am a partner in the firm of Weger, Jauert & Herman of Wapakoneta, Ohio and I also serve as President of The Hauss-Helms Foundation, Inc. and I am here to testify on behalf of that Foundation.

THE HAUSS-HELMS FOUNDATION, INC.

The Hauss-Helms Foundation, Inc. was established in 1965 by Mrs. Besse Hauss Helms and her husband, Walter B. Helms, with the principal purpose of aiding students in the Auglaize County-Allen County, Ohio area to continue their education past high school. Mrs. Helms was the majority shareholder of the Telephone Service Company of Wapakoneta, Ohio and at her death in 1967 she provided that, after certain income provisions for her husband, brother and sisters, her shares in that Company would belong to the Foundation. Mrs. Helms, although childless herself, had a keen interest in young people and a concern that they receive the education required to accept the challenge of our changing society. Mr. Helms shared this interest and concern and together they sought to have their personal wealth aid those whose financial need made it impossible or impracticable to continue their education past high school. When Mr. Helms died in 1969 he left substantially all of his estate to the Foundation.

Mrs. Besse Hauss-Helms, who before her death was the President of the Company for many years as well as the majority shareholder, saw the Company as community-oriented and dedicated to providing the best possible telephone service at the lowest possible rates. She never looked upon the Company as a source of her own enrichment. For many years, she served the Company as President without compensation and finally in 1952 she reluctantly accepted a salary of $3,000.00 per year. This was so even though she spent each work day at her desk at the Company office involved in the management affairs of the Company. Mrs. Helms was aware that historically in our area when independent telephone companies merged or were acquired by the large telephone companies rates went up and service often deteriorated. She repeatedly rejected offers by other telephone companies to purchase her controlling interest in the Company although such a sale would have had substantial economic benefits for her. We did an informal rate survey of six former independent telephone companies in our immediate area which were acquired by large utilities during a period from 1945 through 1968. The survey revealed that telephone rates did indeed go up (Exhibit A).

Mrs. Helms saw The Hauss-Helms Foundation, Inc. as the answer to two of her vital interests: (1) the Foundation would be the vehicle to provide assistance to young people in need of financial aid to continue their education past high school, and (2) to provide a safe harbor for the controlling interest in the Telephone Service Company thereby assuring the community of continued efficient telephone service at most reasonable rates.

The Hauss-Helms Foundation, Inc. was determined to be exempt from Federal Income Tax as an organization described in Section 501(c) (3) of the Internal Revenue Code by letter from the Internal Revenue Service dated May 5, 1966. (Exhibit B). The grant procedures of the Foundation were approved in a letter from the Internal Revenue Service dated September 28, 1973. (Exhibit C).

The Hauss-Helms Foundation, Inc. was originally funded by a $5500.00 gift from Mr. and Mrs. Helms and its limited income during the years prior to the funding from the estates of Mr. and Mrs. Helms was used for scholarship grants to students in nurses training at St. Rita's Hospital, Lima, Ohio. However, beginning in the year 1970 scholarship grant payments and other grant payments have been made as follows:

1970	$21,355.01
1971	66,619.34
1972	57,173.89
1973	76,870.42
1974	95,668.64
1975	105,642.34
1976	130,890.88
1977	105,673.32
1978	116,063.98
1979	213,839.71
1980	140,838.28
1981	145,721.41
1982	159,533.16

Today 89 young men and women are attending at 28 schools, universities and colleges and with aid received from the Foundation.

The Foundation had total assets on December 31, 1982, valued in accordance with IRC provisions, of $2,830,209.78 and income for 1982 of $221,472.37. This represents an 8.67-percent return on average monthly fair market value of assets and 14.63-percent return on book value of assets.

The Trustees of the Foundation, none of whom were related to Mr. and Mrs. Walter B. Helms, are as follows:

Name	Office	Principal occupation
James E. Weger	President and trustee	Attorney at law
Vincent G. Hudson	Vice president and trustee	President, Telephone Service Co.
Robert C. Lietz	Secretary and trustee	President, Bank One of Wapakoneta, Ohio
N. Thomas Cornell	Trustee	President, Cornell & Finkelmeier, Wapakoneta, Ohio
Dr. John R. Haehn	Trustee	Optometrist, Wapakoneta, Ohio

THE TELEPHONE SERVICE CO., WAPAKONETA, OHIO

The Telephone Service Company of Wapakoneta, Ohio is a corporation organized under the laws of Ohio and has as its sole business the operation of the Wapakoneta, Ohio and Cridersville, Ohio telephone exchange under and subject to the rules and regulations established by the Public Utilities Commission of the State of Ohio.

The Company is managed by Vincent G. Hudson, its president, who has been employed by the Company for over thirty years. Mr. Hudson is assisted by Mr. Robert Brown, vice-president and general manager, and the Company employs 36 people.

The Board of Directors of the Company is made up of Mr. Hudson, James E. Weger, Richard L. Gebhardt, Robert C. Lietz and Douglas S. Jauert. Mr. Hudson has been a director of the Company since 1952, Mr. Weger since 1955, Mr. Gebhardt since 1962 and Mr. Lietz and Mr. Jauert since 1981. The directors are paid an annual fee of $1200.00. Mr. Gebhardt is a nephew of Mrs. Helms but owns no stock in the Telephone Service Company. He serves as Treasurer of the Company and receives a salary of $2400.00 per year therefor. His principal occupation and place of residence is in Dayton, Ohio.

On December 31, 1982, the Telephone Service Company had total assets of $4,780,317.39. The company has no debt other than current liabilities and on December 1, 1982 had $1,755,275.11 invested in short-term certificates of deposit and U.S. Treasury Bills. In 1982 the Company paid $788,091.03 in federal, state and local taxes.

The Company has 8400 shares of common stock outstanding. It has but one class of stock. 4432 shares of the common stock were owned by The Hauss-Helms Foundation, Inc. on the effective date of the Tax Reform Act of 1969. Today the Foundation owns 4187 shares and disqualified persons own 13 shares. There are no shares owned by any known relatives of Mr. and Mrs. Walter B. Helms, the creators of the Foundation.

The Telephone Service Company presently services 13086 stations in its franchise area which has an estimated population of 15000 persons. The company has a reputation for low rates and excellent service. The Company has had but one rate increase since 1952. At the time of the last rate increase, effective January 1, 1975, the Public Utilities Commission of Ohio stated in its entry authorizing the increase:

"The applicant last received authority from this Commission for a general rate increase in 1952 (Case No. 22,956). Since that time it has continued to render service under tariffs which provide for local exchange rates which are among the lowest in this state, in most instances lower even than those authorized for mutual companies. For example, its present rate for one-party residential service is only $4.75 per month. Similarly, its installation and move charges of $1.00 and $1.50 are totally out of line with current industry practice. Even under its proposed tariff, these rates and charges would remain well below the state-wide norms. (One-party residential service: $6.00; Installation charge: $4.00; Move charge: $4.00). However, despite these low rates, applicant, through efficient and economical management, has maintained quality service as reflected by a marked absence of subscriber complaints reported to the Commission."

The Telephone Service Company has continued to render efficient, economical telephone service to its subscribers since control has passed to the Foundation, and since 1972 the Company had paid in excess of 49% of its after-tax earnings to its shareholders.

One only need compare the monthly telephone rates of surrounding communities with those of Wapakoneta-Cridersville to see the startling economic benefits to the area served by the Telephone Service Company.

The Telephone Service Company monthly rate for a 1-party business phone is $9.00 and its monthly rate for a 1-party residential phone is $6.75. The Lima-Waynesfield franchise, which borders the Telephone Service Company franchise area on the north and east and is owned by United Telephone Company, has a monthly rate for a 1-party business phone of $39.40 and a monthly rate for a 1-party residential phone of $17.85. the Sidney franchise area, which borders the Telephone Service Company franchise area on the south and is also owned by United Telephone Company, has a monthly rate for a 1-party business phone of $36.25 and a monthly rate for a 1-party residential phone of $17.30. The St. Marys franchise area which borders the Telephone Service Company franchise area on the west and is owned by General Telephone Company, has a monthly rate for a 1-party business phone of $32.75 and a monthly rate for a 1-party residential phone of $12.80.

SECTION 4943, INTERNAL REVENUE CODE

This section imposes an excise tax on excess business holdings of any private foundation as those holdings are defined in the act. The initial tax and the additional tax imposed by the section are confiscatory in nature and if imposed would exceed the assets of The Hauss-Helms Foundation, Inc. The first phase of the correction period allowed by the statute expired on May 26, 1979 in the case of The Hauss-Helms Foundation, Inc.

On that date the share holdings of the Foundation and all disqualified persons in the Telephone Service Company had to be reduced so as not to exceed 50 percent of the outstanding shares of the Company. The Foundation complied with the provisions of the law and made a gift of 245 shares of the Telephone Service Company to the City of Wapakoneta, Ohio for the specific purpose of aiding the City's recreational program.

At the end of the next phase of the allowable correction period (15 years) the combined share holdings of the Foundation and disqualified persons must be reduced to not to exceed 20 percent of the outstanding shares of the Telephone Service Company.

The legislative history of Section 4943 IRC makes it clear that Congress was concerned about the use of a foundation to control business to the detriment of the foundation's charitable purpose and to the disadvantage of competing businesses. The abuses which Congress sought to prevent by the enactment of Section 4943 can be summarized as follows:

(1) Use of the foundation to retain business control in the creator or the creator's family.

(2) Use of the foundation's control of business to unfairly compete with other businesses whose owners do not have the advantage of tax-free income.

(3) Diversion of the foundation's attention from its tax-exempt purpose to management of private business enterprises to the disadvantage of the charitable purpose of the foundation.

None of the potential abuses which concerned Congress at the time it enacted Section 4943 IRC requiring divestiture of excess business holdings apply to The Hauss-Helms Foundation, Inc.'s ownership of controlling interest in Telephone Service Company:

(1) None of the Trustees of the Foundation are members of creator's family or are remotely related to them.

(2) One of the Trustees owns 10 shares of Telephone Service Company stock and one owns 3 shares. None of the three remaining Trustees own any shares of the company.

(3) The Telephone Service Company is a publicly regulated monopoly within its franchise area and therefore does not compete against other businesses in its field. The Company pays its federal and state taxes as would any other corporate utility and its business is exactly of the same character as it was at the time of the first bequest of shares to the Foundation.

(4) The Telephone Service Company operates independently from the Foundation and distributes in excess of 49 percent of its after-tax earnings in dividends to its shareholders.

(5) The Telephone Service Company does not own stock or shares in any other corporation.

During the 95th Congress legislation was introduced which would have exempted The Hauss-Helms Foundation, Inc. from the provisions of IRC Section 4943. At the time that this legislation (H.R. 4030) was reported out of the Committee on Ways and Means the Committee report stated:

"The committee has reviewed the operations of The Hauss-Helms Foundation and has not found any of the conflicts in its operations that gave rise to the excess business holdings provisions. In addition, some protection is provided since the Telephone Company is a regulated public utility" 95th Congress 2d Session, Report No. 95–1039 (Exhibit D).

H.R. 4030 was later amended to provide for an extension of time to meet divestiture requirements rather than to provide an exemption and was passed by the House of Representatives on August 1, 1978 by a vote of 317 to 86. Congressional Record H7612–H7614 dated August 1, 1978 (Exhibit E).

CONCLUSION

The Trustees of the Foundation are of the opinion that it will be difficult to substitute an investment with the quality and return of its holdings in the Telephone Service Company. The fair market value of its investment in Telephone Service

Company has risen from $1,004,880.00 to $2,353,973.27 at the end of 1982 which represents a 134.25 percent increase in value and in 1982 it returned 17.08 percent on book value and 7.29 percent on year-end fair market value.

The compulsory divestiture required by IRC 4943 effectively removes the Trustees' judgment from the economic decision of when, where and how the sale of its investment in the Telephone Service Company should be made to the best advantage of the Foundation.

The economic advantage to the Foundation in being allowed to make its own decision on the retention or disposition of its 50 percent interest in Telephone Service Company is supported by the performance of the investment over the years. Just as obvious is the collateral benefit to the community.

The examination of the rate schedules of the Telephone Service Company and those of surrounding telephone franchises vividly establishes the economic benefit being realized by the community served by the Telephone Service Company, and the quality of service rendered by the Company is demonstrated by the absence of complaints to the Public Utilities Commission of Ohio.

We believe the Telephone Service Company to be one of the most efficiently managed and operated telephone companies anywhere. We believe that the Company has been and continues to be community and service oriented. We believe that attitude is the result of the ownership of the controlling interest in the Company by The Hauss-Helms Foundation, Inc. We believe an economic disservice would be done to the approximately 15,000 people served by the Telephone Service Company if the Foundation is forced by law to divest itself of control of the Company.

The Trustees of The Hauss-Helms Foundation, Inc. are convinced that if reduction of ownership in the Telephone Service Company is required that they are under an affirmative duty to maximize the sale price of the shares by the sale of all of its holdings in the Company. The most obvious prospective purchasers of the controlling interests would be the larger telephone companies. Both United Telephone Company and General Telephone Company franchises bordering the Telephone Company franchise area are on a banded-rate schedule which permits automatic rate increases according to the number of stations served in the franchise area. If the Telephone Service Company were to be purchased by either Company and included in the banded-rate schedule with permission of the Public Utilities Commission of Ohio, then depending upon which company acquired the Telephone Service Company, the increased cost to the subscribers in the Wapakoneta-Cridersville area could be very substantial. An average increase of $10.00 per month for each main station would cost subscribers in excess of $873,00.00 each year.

Since 1970 when control of the Telephone Service Company was first effectively in the Foundation, there has been a demonstration that the charitable purposes of the Foundation have not suffered in their execution and accomplishment by reason of the ownership of the controlling interest in the Company. In that same period such ownership by the Foundation has probably save several million dollars for area telephone subscribers.

While all other utility charges have been increasing dramatically, the Telephone Service Compnay remains as close to the ideal of universally affordable telephone service as may be possible. In the franchise area of the Telephone Service Company you can still make a local call from a pay phone for a nickel.

The Foundation through its ownership of controlling interest in the Telephone Service Company has had a prime investment which it can closely monitor. When and if it appears that investment jeopardizes the performance of the Foundation's charitable purposes, the Trustees in the exercise of sound business judgment, will dispose of its holdings in the Telephone Service Company. But while those holdings produce the income and growth that they historically have and, as a collateral benefit, the community continues to receive efficient low-cost phone service by virtue of the Foundation's control of the Company it would be unfortunate for all concerned if disposition is compelled by statute. Where no abuses exist that gave rise to the enactment of the statute, and time has proven this to be true of the Foundation's ownership of controlling interest in the Telephone Service Company, then an exception to the statute should be provided to prevent the unintended hardship produced by strict compliance with the statute.

We urge that legislation be enacted to provide an exemption from IRC Section 4943 to cover the situtation we have outlined.

"EXHIBIT A"

RATE SURVEY OF INDEPENDENT TELEPHONE COMPANIES ACQUIRED BY LARGE UTILITITES IN THE IMMEDIATE AREA

When small independent telephone companies were purchased by large telephone companies, the survey reveals that rates go up.

In our area the following telephone companies were purchased by large telephone companies and the 1-Party Business and Residential rates did indeed go up.

INDEPENDENT FRANCHISE CITY	ACQUIRING COMPANY		RATE BEFORE SALE		RATE AFTER SALE		PRESENT RATE	
			Bus.	Res.	Bus.	Res.	Bus.	Res.
Kenton	Mid-Continent	(1968)	6.00	4.25	8.00	6.50	23.80	11.60
Sidney	United Tel. of Ohio	(1967)	5.50	3.75	8.25	5.75	37.25	17.30
Lima	United Tel. of Ohio	(1967)	8.00	5.75	10.50	7.75	39.40	17.85
Waynesfield	United Tel. of Ohio	(1967)	4.75	3.00	7.90	5.90	39.40	17.85
St. Marys	General Tel. Company	(1953)	5.75	4.00	7.75	6.00	23.45	11.15
Celina	General Tel. Company	(1945)	5.75	3.75	7.75	6.00	23.45	11.15

"EXHIBIT B"

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
OFFICE OF THE DISTRICT DIRECTOR

Employer Ident.
[illegible]
[illegible]

MAY 5 1966

IN REPLY REFER TO
Form L-178-MCB
CLE-EO-66 -139

The Hauss-Helms
Foundation, Inc.
Wapakoneta, Ohio 45895

Purpose: Charitable & Educational

Address Inquiries & File Returns: District Director
Cleveland, Ohio

Form 990-A Required

Accounting Period Ending:
December 31

Gentlemen:

On the basis of your stated purposes and the understanding that your operations will continue as evidenced to date, or will conform to those proposed in your ruling application, we have concluded that you are exempt from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. Any changes in operation from those described, or in your character or purposes, must be reported immediately to your District Director for consideration of their effect upon your exempt status. You must also report any change in your name or address.

You are not required to file Federal income tax returns so long as you retain an exempt status, unless you are subjectto the tax on unrelated business income imposed by section 511 of the Code, in which event you are required to file Form 990-T. Our determination as to your liability for filing the annual information return, Form 990-A, is set forth above. That return, if required, must be filed on or before the 15th day of the fifth month after the close of your annual accounting period indicated above.

Contributions made to you are deductible by donors as provided in section 170 of the Code. Bequests, legacies, devises, transfers or gifts to or for your use are deductible for Federal estate and gift tax purposes under the provisions of section 2055, 2106, and 2522 of the Code.

You are not liable for the taxes imposed under the Federal Insurance Contributions Act (social security taxes) unless you file a waiver of exemption certificate as provided in such act. You are not liable for the tax imposed under the Federal Unemployment Tax Act. Inquiries about the waiver of exemption certificate for social security taxes should be addressed to this office, as should any questions concerning excise, employment or other Federal taxes.

This is a determination letter.

If distributions are made to individuals, case histories regarding the recipients should be kept showing name, addresses, purposes of awards, manner of selection, relationship if any to members, officers, trustees or donors of funds to you, in order that any and all distributions made to individuals can be substantiated upon request by the Internal Revenue Service (Revenue Ruling 56-304, Cumulative Bulletin 1956-2, page 306.)

Very truly yours,

F. S. Turbett

F. S. Turbett, Jr.
District Director

SS-4

"EXHIBIT C"

Department of the Treasury

Internal Revenue Service
Washington, DC 20224

Date: SEP 28 1973
In reply refer to: T:MS:EO:R:2-5

DO 34

The Hauss-Helms Foundation, Inc.
Wapakoneta, Ohio 45895

Gentlemen:

This is in reply to your letter dated August 15, 1973, which requests a ruling concerning your scholarship grant procedures.

Based on the information submitted and assuming your scholarship program will be conducted as proposed with a view to providing objectivity and nondiscrimination in the awarding of grants, we rule that your procedures in the awarding of scholarship grants comply with the requirements contained in section 4945(g)(1) of the Internal Revenue Code of 1954 and that scholarships granted in accordance with such procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) of the Code. In addition, we rule that grants made under your procedures are excludable from the gross income of recipients under section 117 of the Code.

This ruling is based on the understanding that there will be no material change in the facts upon which it is based and that no grants will be awarded to relatives of trustees, members of the selection committee, or for a purpose that is inconsistent with the purposes described in section 170(c)(2)(B) of the Code. Any change in your procedures must be reported to the District Director, Cleveland, Ohio, which is your key district for exempt organization matters.

We are notifying your key District Director of this action.

Sincerely yours,

E. D. Coleman
E.D. Coleman
Chief, Rulings Section II
Exempt Organizations Branch

"EXHIBIT D"

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 95-1039

PERMISSIBLE HOLDINGS OF CERTAIN PRIVATE FOUNDATIONS IN CERTAIN PUBLIC UTILITIES

APRIL 5, 1978.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 4030]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4030) to amend the Internal Revenue Code of 1954 to increase the amount of the stock which certain private foundations may hold in certain public utilities without being subject to the excise tax on excess business holdings, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. APPLICATION OF SECTION 4943 OF INTERNAL REVENUE CODE OF 1954 TO CERTAIN HOLDINGS IN PUBLIC UTILITIES.

(a) IN GENERAL.—In the case of a private foundation—

(1) which was incorporated on or before December 31, 1967;

(2) which on May 26, 1969, held at least 50 percent of the voting stock of a qualified public utility;

(3) which acquired such stock solely by gift, devise, or bequest; and

(4) no officer, director, or trustee of which is an individual who contributed such stock to such foundation or is a member of the family of such an individual, or who is a member of the family of an individual who devised or bequeathed such stock to such foundation,

subsection (c)(4)(A)(i) of section 4943 of the Internal Revenue Code of 1954 shall be applied with respect to the holdings of such foundation in such public utility by substituting "51 percent" for "50 percent", and subsection (c)(4)(D) of such section 4943 shall not apply with respect to such holdings. For purposes of this subsection, the term "family" has the meaning given to such term by section 4946(d) of such Code.

(b) QUALIFIED PUBLIC UTILITY.—For purposes of this section, the term "qualified public utility" means any corporation—

(1) which on May 26, 1969, was a public utility (as defined in section 247(b)(1) of such Code);

(2) the taxable income of which for its first taxable year ending after such date was less than $1,000,000; and

(3) which distributed to its shareholders, in any 3 of the 5 taxable years preceding the taxable year in which this Act is enacted and in each taxable year ending after the date of the enactment of this Act, at least 40 percent of its net income remaining after payment of Federal, State, and local taxes for such taxable year.

(c) SPECIAL RULE.—For purposes of subsection (a)(2), stock of any qualified public utility held—

(1) in any trust created before May 27, 1969, or

(2) in any estate of a decedent dying before such date,

of which any private foundation is the primary or remainder beneficiary shall be deemed to have been held by such foundation on May 26, 1969.

(d) PROHIBITION OF LATER PURCHASES.—Subsection (a) shall apply with respect to the holdings of a private foundation in any qualified public utility only if the foundation does not purchase after the date of the enactment of this Act any stock or other interest in such qualified public utility.

(e) EFFECTIVE DATE.—This section shall apply with respect to taxable years ending after the date of the enactment of this Act.

Amend the title so as to read:

A bill to increase the amount of the stock which certain private foundations may hold in certain public utilities without being subject to the excise tax on excess business holdings.

I. SUMMARY

The bill makes an exception to the present law rules which, in effect, limit the business holdings of private foundations. The bill provides that, under specific conditions, a private foundation and its "disqualified persons" together may hold up to 51 percent of the stock of certain public utility companies.

II. GENERAL STATEMENT

Present law

The Tax Reform Act of 1969 imposed an excise tax upon the excess business holdings of a private foundation (sec. 4943 of the Code). Generally, under the excess business holdings provisions, the combined ownership of a business by a private foundation and all disqualified persons cannot exceed 20 percent of the voting stock of the business (35 percent if other persons have effective control of the business).

The 1969 Act provided that if a private foundation and disqualified persons together had holdings on May 26, 1969 in excess of the permitted amounts under the general rules, then those holdings could be retained if they consisted of not more than 50 percent of the business. If the combined holdings exceeded 50 percent of the business on that date, then over a transitional period the combined holdings have to be reduced to 50 percent (ultimately to 35 percent if the disqualified persons hold, in the aggregate, no more than 2 percent of the business; if they hold more than 2 percent, then the combined holdings may continue to be as much as 50 percent, of which the foundation itself may hold no more than 25 percent). In one situation under the 1969 Act rules, a foundation and its disqualified persons together are permitted to continue to hold 51 percent of a business.[1]

Reasons for change

The committee understands that the Hauss-Helms Foundation of Wapakoneta, Ohio (referred to in this report as the "Foundation") at present owns slightly more than 52 percent of the outstanding stock of the Telephone Service Company of Wapakoneta, Ohio (referred to in this report as the "Telephone Company"). Under the excess business holdings provisions of present law, the Foundation is required to dispose of sufficient stock before May 26, 1979, to reduce its ownership of the Telephone Company to 50 percent. The committee understands that the Foundation's trustees believe that absolute majority ownership of the Telephone Company adds a substantial premium to the value of the Foundation's holdings in the Telephone Company. Under this view, if the Foundation sells enough stock in the Telephone Company to reduce its remaining holdings to 50 percent, then the value of these remaining holdings would be reduced sharply. As a result, the trustees believe that the Foundation, as a practical matter, would be required to sell a majority interest of the Telephone Company if it were forced to comply with the excess business holdings provisions of present law.

The committee has been informed that such a disposal of a majority interest in the Telephone Company by the Foundation would have a substantial adverse effect upon the community that the Telephone Company serves. The Telephone Company historically has been able to maintain low rates for telephone service to its customers. If the controlling interest in the Telephone Company were sold to another telephone company, it is very likely that the rates in its service area would increase substantially.

---

[1] Tax Reform Act of 1969, sec. 101(l)(4), 83 Stat. 535.

The committee has reviewed the operations of the Hauss-Helms Foundation and has not found any of the conflicts in its operations that gave rise to the excess business holdings provisions. In addition, some protection against abuse is provided since the Telephone Company is a regulated public utility.

Accordingly, the committee has concluded that it is appropriate for the Hauss-Helms Foundation to be permitted to continue to hold a majority ownership of the Telephone Company of Wapakoneta, Ohio, in light of the particular facts of this case.

Explanation of the bill

The bill provides an exception to the tax on excess business holdings of a private foundation in the case of certain stock of a qualified public utility. If the foundation and the public utility meet certain tests under the bill, the foundation and its disqualified persons together are permitted to hold up to 51 percent of the voting stock of the public utility.

In order to qualify for the special exception for public utility stock, the following criteria must be satisfied:

(1) the private foundation must have been incorporated on or before December 31, 1967;

(2) on May 26, 1969, the private foundation must have held at least 50 percent of the voting stock of a "qualified public utility";

(3) all of the public utility stock owned by the private foundation must have been acquired solely by gift, devise, or bequest;

(4) no officer, director, or trustee of the foundation may be an individual who contributed stock of the public utility to the foundation, or a member of the family of any person who gave, devised, or bequeathed any public utility stock to the foundation; and

(5) the private foundation does not purchase any stock or other interest in the qualified public utility after the date of enactment of the bill.

For purposes of determining whether the private foundation held at least 50 percent of the voting stock of a qualified public utility on May 26, 1969, stock held in a trust created before May 27, 1969, or by an estate of a decedent who died before that date, and of which the private foundation is the primary or remainder beneficiary, is deemed to have been held by the foundation on May 26, 1969.

Under the bill, a "qualified public utility" is any corporation which satisfies the following criteria:

(1) the utility was a public utility (as defined in section 247 (b)(1)) on May 26, 1969;

(2) the utility's taxable income for the first taxable year ending after May 26, 1969 was less than $1,000,000; and

(3) the utility must have distributed to its shareholders, in each of any three of the five years preceding the date of enactment and for each year ending after the date of enactment, at least 40 percent of its net income, as determined after payment of Federal, State and local taxes for that year.

Effective date

The bill applies to taxable years beginning after the date of enactment.

III. EFFECT OF THE BILL ON THE BUDGET AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

Budget effects

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect on the budget of this bill, H.R. 4030. The committee estimates that the provisions contained in the bill will not have any direct revenue effect.

The Treasury Department agrees with this statement.

Vote of the committee

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report the bill, as amended. The bill, H.R. 4030, as amended, was ordered favorably reported by roll call vote of 16 to 7.

IV. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clauses 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 4030, as amended.

Oversight findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee's oversight activities with respect to the application of the private foundation excess business holdings rules that the committee concluded that it is appropriate to enact the provisions contained in the bill.

New budget authority and tax expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill involve no new budget authority or new or increased tax expenditures.

Consultation with Congressional Budget Officials on budget estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in part III of this report) and agrees that the bill will not have any direct revenue effect.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject matter of this bill.

Inflationary impact

In compliance with clause 2(l)(4), the committee states that the enactment of this bill is not expected to have an inflationary impact on prices and costs in the operation of the national economy.

"EXHIBIT E"

Baucus
Bauman
Beard, R.I.
Bedell
Beilenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonior
Bonker
Bowen
Brademas
Breckinridge
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Mich.
Broyhill
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burleson, Tex.
Burlison, Mo.
Burton, John
Burton, Phillip
Butler
Byron
Caputo
Carney
Carr
Carter
Cavanaugh
Cederberg
Chappell
Chisholm
Clausen, Don H.
Clawson, Del
Clay
Cleveland
Cochran
Cohen
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Corman
Cornell
Cornwell
Cotter
Coughlin
Crane
Cunningham
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Davis
de la Garza
Delaney
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Diggs
Dingell
Dodd
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Eilberg
Emery
English
Erlenborn
Ertel
Evans, Colo.
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fenwick
Findley
Fish
Fisher
Fithian
Flippo
Flood
Florio
Flowers
Flynt
Foley
Ford, Mich.
Forsythe
Fountain
Frenzel
Frey
Fuqua
Gammage
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gradison
Grassley
Green
Gudger
Guyer
Hagedorn
Hall
Hamilton
Hammerschmidt
Hanley
Hannaford
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Holtzman
Horton
Howard
Hubbard
Huckaby
Hughes
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jordan
Kasten
Kastenmeier
Kazen
Kelly
Keys
Kildee
Kindness
Kostmayer
Krebs
Krueger
LaFalce
Lagomarsino
Latta
Leach
Lederer
Leggett
Lehman
Lent
Levitas
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Luken
Lundine
McClory
McCormack
McDonald
McEwen
McFall
McHugh
McKay
McKinney
Madigan
Mahon
Mann
Markey
Marks
Marlenee
Marriott
Martin
Mattox
Mazzoli
Meeds
Metcalfe
Meyner
Michel
Mikulski
Mikva
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, John
Myers, Michael
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pattison
Pease
Pepper
Perkins
Pettis
Pickle
Pike
Poage
Pressler
Preyer
Price
Pritchard
Pursell
Quayle
Quie
Quillen
Rahall
Railsback
Rangel
Regula
Reuss
Rhodes
Richmond
Rinaldo
Risenhoover
Roberts
Robinson
Roe
Roncalio
Rooney
Rose
Rosenthal
Rostenkowski
Roybal
Rudd
Runnels
Ruppe
Russo
Ryan
Santini
Satterfield
Sawyer
Scheuer
Schulze
Sebelius
Seiberling
Sharp
Shipley
Shuster
Sikes
Simon
Sisk
Skelton
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Spellman
Spence
St Germain
Staggers
Stangeland
Stanton
Stark
Steed
Steers
Steiger
Stockman
Stokes
Stratton
Studds
Stump
Symms
Taylor
Thompson
Thone
Thornton
Traxler
Treen
Tribble
Tsongas
Tucker
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Waggonner
Walgren
Walker
Walsh
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Wiggins
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—2

Myers, Gary
Schroeder

NOT VOTING—29

Beard, Tenn.
Breaux
Brown, Ohio
Burke, Mass.
Collins, Ill.
Conyers
Dent
Ford, Tenn.
Fowler
Fraser
Gooding
Harrington
Jenkins
Jones, Tenn.
Kemp
Le Fante
McCloskey
McDade
Maguire
Mathis
Milford
Rodino
Rogers
Rousselot
Sarasin
Teague
Whalen
Whitten
Young, Tex.

The Clerk announced the following pairs:

Mr. Jones of Tennessee with Mr. Gooding.
Mr. Le Fante with Mr. Brown of Ohio.
Mr. Burke of Massachusetts with Mr. McCloskey.
Mr. Dent with Mr. Sarasin.
Mr. Conyers with Mr. Milford.
Mr. Maguire with Mr. Beard of Tennessee.
Mr. Breaux with Mr. Whalen.
Mr. Harrington with Mr. Rousselot.
Mr. Ford of Tennessee with Mr. McDade.
Mr. Jenkins with Mr. Whitten.
Mrs. Collins of Illinois with Mr. Teague.
Mr. Mathis with Mr. Fowler.
Mr. Rogers with Mr. Fraser.

So (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

The SPEAKER pro tempore laid before the House the following message from the Senate:

"*Ordered*, That the Secretary of the [illegible] be directed to request the House of [illegible]sentatives to return to the Senate the bill (S. 3342) entitled "An Act to name a lake which has been completed as part of the Papillion Creek basin project as the 'Standing Bear Lake'."

The SPEAKER pro tempore. Without objection, the request of the Senate is agreed to.

There was no objection.

PERMISSIBLE HOLDINGS OF CERTAIN PRIVATE FOUNDATIONS IN CERTAIN PUBLIC UTILITIES NOT SUBJECT TO TAX

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 4030) to amend the Internal Revenue Code of 1954 to increase the amount of the stock which certain private foundations may hold in certain public utilities without being subject to the excise tax on excess business holdings.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

Mr. JOHN L. BURTON. Mr. Speaker, reserving the right to object, I wonder if the chairman would tell us exactly what is involved in this bill.

Mr. ULLMAN. Mr. Speaker, if the gentleman would yield, this is the same bill we had up on suspension on May 15 which secured a substantial majority, but not by two-thirds. It was objected to by a number of Members.

Mr. MIKVA and Mr. STARK had objections. They had been conferring with the author of the bill, Mr. GUYER.

It is my understanding that the gentleman from Illinois (Mr. MIKVA) has an amendment that he wants to offer that would extend by 10 years the time requirements, and that meets his objections and I would hope that it would meet the objections of all of the Members of the House.

Mr. JOHN L. BURTON. The bill provides what for whom? That is what I am trying to find out. In other words, I know it is a bill that was defeated, I guess on suspension. It was objected to before. I am just wondering what the bill does and who is the beneficiary.

Mr. ULLMAN. If the gentleman would yield further, let me say that the present law has a requirement on private foundations that requires that there be a limitation on the amount being held on business holdings. The bill makes an exception to the present law rules which, in effect, limit the business holdings of private foundations. The bill provides under specific conditions a private foundation and its qualified persons together may hold up to 51 percent of the stock of certain public utility companies. It is my understanding that provision will be amended by the amendment to be offered by the gentleman from Illinois.

Mr. JOHN L. BURTON. Further reserving the right to object, I wonder if the gentleman from Illinois (Mr. MIKVA) could explain his amendment.

Mr. MIKVA. If the gentleman will yield, the amendment I propose to offer and that I believe the gentleman from California (Mr. STARK) concurs in would in effect put an additional 10 years' sunset provision in, so that this foundation would have an additional 10 years to dispose of its stock, similar to the way other foundations are treated in existing law. The amendment in effect would give them an additional 10 years after which time they would have to dispose of the stock as if they were any other foundation.

I think that meets most of the objections the Treasury Department had. It certainly meets the objections the gentleman from California (Mr. STARK) and I had.

I think my colleague, the gentleman

from Minnesota, may have a further explanation.

Mr. JOHN L. BURTON. Further reserving the right to object, I will yield to the gentleman from Minnesota. Would this bill not be better to go back to committee and have it on the floor after it is amended?

Mr. FRENZEL. Mr. Speaker, if the gentleman will yield, I think the chairman has taken the most expeditious and best route to get this bill passed. The minority does agree that the Mikva amendment will take most of the controversy out of the bill. We support the bill. We support the procedure. We support the Mikva amendment.

I thank the gentleman from California for yielding.

Mr. GUYER. Mr. Speaker, will the gentleman yield?

Mr. JOHN L. BURTON. I yield to the gentleman from Ohio.

Mr. GUYER. Mr. Speaker, I thank the gentleman for yielding.

The crux of the bill is we have a small nonprofit foundation.

Mr. JOHN L. BURTON. A mom and pop foundation?

Mr. GUYER. It is a very small foundation in Wapakoneta, Ohio, the home town of Neil Armstrong. It happens that these two people left this money for the students to go to college. What happens is if we do not allow this remedial action, there will be the prospect of either raising the telephone rates or turning over the management to a larger company, and more than that it would jeopardize 182 kids going to college. Under present figures the youngsters go to 64 colleges in 14 States, including California and Illinois.

It is very important to us. We have agreed to the amendment. I hope there will be no objection.

Mr. JOHN L. BURTON. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The Clerk read the bill, as follows:

H.R. 4000

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 4943 of the Internal Revenue Code of 1954 (relating to taxes on excess business holdings) is amended by adding at the end thereof the following new subsection:

"(e) CERTAIN HOLDINGS IN PUBLIC UTILITIES.—

"(1) IN GENERAL.—In the case of a private foundation—

"(A) which was incorporated on or before December 31, 1967,

"(B) which on May 26, 1969, held at least 50 percent of the voting stock of a qualified public utility;

"(C) which acquired such stock solely by gift, devise, or bequest; and

"(D) no officer, director, or trustee of which is an individual who contributed such stock to such foundation or is a member of the family of such an individual, or who is a member of the family of an individual who devised or bequeathed such stock to such foundation,

subsection (c)(4)(A)(i) shall be applied with respect to the holdings of such foundation in such public utility by substituting "51 percent" for "50 percent", and subsection (c)(4)(D) shall not apply with respect to such holdings. For purposes of this paragraph, the term 'family' has the meaning given to such term by section 4946(d).

"(2) QUALIFIED PUBLIC UTILITY.—For purposes of this subsection, the term 'qualified public utility' means any corporation—

"(A) which on May 26, 1969, was a public utility (as defined in section 247(b)(1));

"(B) the taxable income of which for its first taxable year ending after such date was less than $1,000,000, and

"(C) which distributed to its shareholders, in any 3 of the 5 taxable years preceding the taxable year in which this subsection is enacted and in each taxable year ending after the date of the enactment of this subsection, at least 40 percent of its net income remaining after payment of Federal, State, and local taxes for such taxable year.

"(3) SPECIAL RULE. For the purposes of paragraph (1)(B), stock of any qualified public utility held—

"(A) in any trust created before May 27, 1969, or

"(B) in any estate of a decedent dying before such date,

of which any private foundation is the primary or remainder beneficiary shall be deemed to have been held by such foundation on May 26, 1969.

"(4) PROHIBITION OF LATER PURCHASES.—Paragraph (1) shall apply with respect to the holdings of a private foundation in any qualified public utility only if the foundation does not purchase after the date of the enactment of this subsection any stock or other interest in such qualified public utility.".

(b) The amendment made by subsection (a) shall apply with respect to taxable years ending after the date of the enactment of this Act.

COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The SPEAKER pro tempore. The Clerk will report the committee amendment in the nature of a substitute.

The Clerk read as follows:

Committee amendment in the nature of a substitute:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. APPLICATION OF SECTION 4943 OF INTERNAL REVENUE CODE OF 1954 TO CERTAIN HOLDINGS IN PUBLIC UTILITIES

(a) IN GENERAL.—In the case of a private foundation—

(1) which was incorporated on or before December 31, 1967;

(2) which on May 26, 1969, held at least 50 percent of the voting stock of a qualified public utility;

(3) which acquired such stock solely by gift, devise, or bequest; and

(4) no officer, director, or trustee of which is an individual who contributed such stock to such foundation or is a member of the family of such an individual, or who is a member of the family of an individual who devised or bequeathed such stock to such foundation,

subsection (c)(4)(A)(i) of section 4943 of the Internal Revenue Code of 1954 shall be applied with respect to the holdings of such foundation in such public utility by substituting "51 percent" for "50 percent", and subsection (c)(4)(D) of such section 4943 shall not apply with respect to such holdings. For the purposes of this subsection, the term "family" has the meaning given to such term by section 4946(d) of such Code.

(b) QUALIFIED PUBLIC UTILITY.—For purposes of this section, the term "qualified public utility" means any corporation—

(1) which on May 26, 1969, was a public utility (as defined in section 247(b)(1) of such Code);

(2) the taxable income of which for its first taxable year ending after such da
less than $1,000,000; and

(3) which distributed to its shareho
in any 3 of the 5 taxable years precedi
taxable year in which this Act is e
and in each taxable year ending aft
date of the enactment of this Act, a
40 percent of its net income remaining a
payment of Federal, State, and local taxes for such taxable year.

(c) SPECIAL RULE.—For purposes of subsection (a)(2), stock of any qualified public utility held—

(1) in any trust created before May 27, 1969, or

(2) in any estate of a decedent dying before such date,

of which any private foundation is the primary or remainder beneficiary shall be deemed to have been held by such foundation on May 26, 1969.

(d) PROHIBITION OF LATER PURCHASES.—Subsection (a) shall apply with respect to the holdings of a private foundation in any qualified public utility only if the foundation does not purchase after the date of the enactment of this Act any stock or other interest in such qualified public utility.

(e) EFFECTIVE DATE.—This section shall apply with respect to taxable years ending after the date of the enactment of this Act.

Mr. MIKVA (during the reading). Mr. Speaker, I ask unanimous consent that the committee amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point.

The SPEAKER pro tempore. Is the
objection to the request of the gentlema
from Illinois?

There was no objection.

AMENDMENT OFFERED BY MR. MIKVA TO COMMITTEE AMENDMENT IN THE NATUR A SUBSTITUTE

Mr. MIKVA. Mr. Speaker, I offe
amendment to the committee am
ment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. MIKVA to
committee amendment in the nature
substitute: Page 4, strike out line 22
all that follows down through line 3 on
5 and insert the following: "subsection
(4)(B) of section 4943 of the Internal R
nue Code of 1954 shall be applied with
spect to the holdings of such foundation i
such public utility as if such private foundation had a more than 95 percent voting
stock interest in such public utility on
26, 1969. For purposes of this subsec
the".

Mr. MIKVA (during the reading). Mr.
Speaker, ask unanimous consent th
the amendment to the committee am
ment in the nature of a substitut
considered as read and printed in
RECORD; it is a technical amendmen

The SPEAKER pro tempore. Is t
objection to the request of the gen
man from Illinois?

There was no objection.

(Mr. MIKVA asked and was given permission to revise and extend
remarks.)

Mr. MIKVA. Mr. Speaker, the effect of the amendment is to put a 10-year sunset provision on this bill so that at the end of that time the private foundat
will have to dispose of its holdings.

I think that this takes care of most of the objections to the bill and I urge the adoption of the amendment.

Mr. FRENZEL. Mr. Speaker, I rise in support of the amendment.

The minority agrees that this is a good amendment and urges its speedy passage and that the bill, as amended, be passed.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Illinois (Mr. Mikva) to the committee amendment in the nature of a substitute.

The amendment to the committee amendment in the nature of a substitute was agreed to.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CARNEY. Mr. President, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 317, nays 86, not voting 29, as follows:

[Roll No. 626]

YEAS—317

Abdnor
Addabbo
Akaka
Alexander
Ambro
Ammerman
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Applegate
Archer
Armstrong
Ashbrook
Ashley
Badham
Bafalis
Baldus
Barnard
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Beilenson
Bevill
Biaggi
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Bowen
Brademas
Breckinridge
Brinkley
Brooks
Broomfield
Brown, Mich.
Broyhill
Buchanan
Burgener
Burke, Fla.
Burleson, Tex.
Butler
Caputo
Carter
Cederberg
Chappell
Clausen, Don H.
Clawson, Del
Cleveland
Cochran
Cohen
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Cornell
Cornwell
Cotter
Coughlin
Crane
Cunningham
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Davis
de la Garza
Derrick
Derwinski
Devine
Dickinson
Dicks
Diggs
Dodd
Dornan
Downey
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Eilberg
Emery
English
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Fary
Fenwick
Findley
Fish
Fisher
Fithian
Flood
Florio
Flowers
Flynt
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Frey
Fuqua
Gammage
Gaydos
Gephardt
Giaimo
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Gradison
Grassley
Green
Gudger
Guyer
Hagedorn
Hall
Hamilton
Hammerschmidt
Hanley
Hannaford
Hansen
Harsha
Hefner
Heftel
Hightower
Hillis
Hollenbeck
Holt
Horton
Howard
Hubbard
Huckaby
Hughes
Hyde
Ichord
Jeffords
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jordan
Kasten
Kazen
Kelly
Kemp
Kindness
Krueger
LaFalce
Lagomarsino
Latta
Leach
Lederer
Leggett
Lent
Levitas
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Luken
Lundine
McClory
McCloskey
McCormack
McDonald
McEwen
McFall
McHugh
McKay
McKinney
Madigan
Mahon
Mann
Marks
Marlenee
Marriott
Martin
Mazzoli
Meeds
Meyner
Michel
Mikulski
Mikva
Miller, Ohio
Mineta
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Moss
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, John
Myers, Michael
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
O'Brien
Oberstar
Obey
Patten
Pepper
Perkins
Pettis
Pickle
Pike
Poage
Pressler
Preyer
Price
Pritchard
Pursell
Quayle
Quie
Quillen
Railsback
Regula
Rhodes
Rinaldo
Risenhoover
Roberts
Robinson
Roe
Rogers
Roncalio
Rose
Rostenkowski
Rudd
Runnels
Ruppe
Russo
Santini
Sawyer
Schulze
Sebelius
Sharp
Shipley
Shuster
Sikes
Simon
Sisk
Skelton
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Spellman
Spence
Staggers
Stangeland
Stanton
Stark
Steed
Steers
Stockman
Stratton
Stump
Symms
Taylor
Thone
Thornton
Traxler
Treen
Trible
Udall
Ullman
Vander Jagt
Waggonner
Walgren
Walker
Walsh
Wampler
Watkins
White
Whitehurst
Whitley
Whitten
Wiggins
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wylie
Young, Alaska
Young, Fla.
Young, Tex.
Zablocki
Zeferetti

NAYS—86

Anderson, Calif.
Aspin
AuCoin
Bedell
Benjamin
Bennett
Bonior
Brodhead
Brown, Calif.
Burlison, Mo.
Burton, John
Burton, Phillip
Byron
Carney
Carr
Cavanaugh
Chisholm
Corman
Delaney
Dellums
Dingell
Drinan
Edgar
Evans, Colo.
Evans, Ind.
Fascell
Flippo
Garcia
Gibbons
Gore
Harkin
Harris
Hawkins
Holtzman
Ireland
Jacobs
Kastenmeier
Keys
Kildee
Kostmayer
Krebs
Lehman
Markey
Mattox
Metcalfe
Miller, Calif.
Minish
Mitchell, Md.
Mottl
Murphy, Pa.
Myers, Gary
Nowak
Oakar
Ottinger
Panetta
Patterson
Pattison
Pease
Rahall
Rangel
Reuss
Richmond
Rooney
Rosenthal
Roybal
Ryan
Satterfield
Scheuer
Schroeder
Seiberling
St Germain
Stokes
Studds
Thompson
Tsongas
Van Deerlin
Vanik
Vento
Volkmer
Waxman
Weaver
Weiss
Wydler
Yates
Yatron
Young, Mo.

NOT VOTING—29

Breaux
Brown, Ohio
Burke, Calif.
Burke, Mass.
Clay
Collins, Ill.
Conyers
Dent
Ford, Tenn.
Fraser
Goodling
Harrington
Heckler
Holland
Jenkins
Jones, Tenn.
Le Fante
McDade
Maguire
Mathis
Milford
Rodino
Rousselot
Sarasin
Steiger
Teague
Tucker
Whalen
Wilson, C. H.

The Clerk announced the following pairs:

Mr. Jones of Tennessee with Mrs. Heckler.
Mr. Le Fante with Mr. McDade.
Mr. Burke of Massachusetts with Mr. Milford.
Mr. Breaux with Mr. Rousselot.
Mr. Dent with Mr. Tucker.
Mr. Ford of Tennessee with Mr. Whalen.
Mrs. Collins of Illinois with Mr. Sarasin.
Mr. Conyers with Mr. Goodling.
Mr. Maguire with Mr. Brown of Ohio.
Mr. Mathis with Mr. Steiger.
Mr. Harrington with Mr. Holland.
Mr. Clay with Mr. Jenkins.
Mrs. Burke of California with Mr. Fraser.
Mr. Charles H. Wilson of California with Mr. Teague.

So the bill was passed.

The result of the vote was announced as above recorded.

COMMITTEE AMENDMENT TO THE TITLE

The SPEAKER pro tempore. The Clerk will report the committee amendment to the title.

The Clerk read as follows:

Committee amendment to the title: Amend the title so as to read: "A bill to increase the amount of the stock which certain private foundations may hold in certain public utilities without being subject to the excise tax on excess business holdings."

AMENDMENT OFFERED BY MR. MIKVA TO THE COMMITTEE AMENDMENT TO THE TITLE

Mr. MIKVA. Mr. Speaker, I offer an amendment to the committee amendment to the title.

The Clerk read as follows:

Amendment offered by Mr. Mikva to the committee amendment to the title: In lieu of the committee amendment to the title, amend the title so as to read: "A bill to increase the period during which certain private foundations may continue to hold their May 26, 1969, interests in certain public utilities without being subject to the excise tax on excess business holdings."

The amendment to the committee amendment to the title was agreed to.

The committee amendment to the title, as amended, was agreed to.

A motion to reconsider was laid on the table.

FOREIGN AID AUTHORIZATIONS, FISCAL YEAR 1979

Mr. ZABLOCKI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 12514) to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to authorize international security assistance programs for fiscal year 1979, and for other purposes.

The Speaker pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. Zablocki).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State ofthe Union for the further consideration of the bill H.R. 12514, with Mr. Fuqua in the chair.

The CHAIRMAN. When the Committee rose on Monday, July 31, 1978, all time for general debate on the bill had expired.

"EXHIBIT F"

TELEPHONE SERVICE COMPANY
WAPAKONETA, OHIO

DIVIDENDS

Year	After-Tax Earnings Per Share	Dividend Per Share
1982	$ 94.46	$ 41.00
1981	73.85	38.00
1980	70.07	37.00
1979	66.82	36.00
1978	61.34	27.00
1977	53.51	27.00
1976	46.52	24.00
1975	44.52	23.00
1974	34.47	18.00
1973	31.61	16.00
1972	28.89	12.00

"EXHIBIT G"

TELEPHONE SERVICE COMPANY

BALANCE SHEET

TELEPHONE SERVICE COMPANY

	1982 12 Months	1981 12 Months
ASSETS		
UTILITY PLANT		
Telephone plant and equipment	4,987,422.62	4,756,274.83
Less allowance for depreciation	2,306,328.15	1,998,199.91
	2,681,094.47	2,758,074.92
CURRENT ASSETS		
Cash on hand and in banks	41,117.58	89,183.83
Investments - principally certificates of deposit	1,755,275.11	1,150,000.00
Accounts receivable-subscribers	26,738.27	23,914.35
Due from subscribers-unbilled toll	151,208.82	133,400.76
Material and supplies	48,197.24	30,003.32
Prepaid expenses	76,685.90	47,653.92
TOTAL CURRENT ASSETS	2,099,222.92	1,474,156.18
TOTAL ASSETS	4,780,317.39	4,232,231.10
STOCKHOLDERS' EQUITY AND LIABILITIES		
STOCKHOLDERS' EQUITY		
Common stock par value $50,00,		
12,000 shares authorized,	420,000.00	420,000.00
8,400 shares issued and outstanding	18,000.00	18,000.00
Paid-in-capital in excess of par	4,024,363.42	3,575,288.58
Retained earnings	4,462,363.42	4,013,288.58
CURRENT LIABILITIES		
Accounts payable	46,810.47	91,037.60
Accrued taxes and other	94,304.36	74,546.37
Accrued Federal Income Tax	132,484.89	41,006.75
Advance billings and payments	3,123.40	1,605.19
TOTAL CURRENT LIABILITIES	276,723.12	208,195.91
Defered Federal Income Tax	41,230.85	10,746.61
TOTAL LIABILITIES	4,780,317.39	4,232,231.10

STATEMENTS OF EARNINGS

TELEPHONE SERVICE COMPANY

COMPARATIVE STATEMENT OF OPERATIONS

		1982	1981
		12 Months	**12 Months**
Operating revenue:			
Subscriber station revenue		778,649.57	743,154.39
Miscellaneous operating revenue		82,733.42	80,813.65
TOTAL LOCAL SERVICE REVENUE		861,382.99	823,968.04
Message toll revenue		1,780,821.47	1,346,240.16
Directory advertising		140,211.73	111,268.80
Uncollectible operating revenue	DR	(7,508.51)	(8,144.31)
TOTAL TOLL & DIRECTORY REVENUE		1,913,524.69	1,449,364.65
TOTAL OPERATING REVENUE		2,774,907.68	2,273,332.69
Operating expenses:			
Maintenance expense		345,627.13	280,119.91
Depreciation		331,084.16	264,812.50
Traffic expense		242,448.61	218,860.84
Commercial expense		206,580.43	166,259.37
General expenses		255,264.71	229,990.24
OPERATING EXPENSE		1,381,005.04	1,161,042.86
NET OPERATING REVENUE		1,393,902.64	1,112,289.83
Other Income		187,663.23	143,922.15
INCOME BEFORE TAXES		1,581,565.87	1,256,211.98
Taxes:			
Taxes other than federal income		200,415.65	209,078.83
Federal income tax		587,675.38	426,753.36
NET INCOME		793,474.84	620,379.79
Cash dividends on common stock		344,400.00	319,200.00
PROFIT		449,074.84	301,179.79

Mr. GUARINI. Thank you, Mr. Weger.

Mr. Frenzel?

Mr. FRENZEL. Mr. Chairman, I just want to review with Mr. Reardon if I can, the recent history of the problem.

You had a bill for relief in the past session which was passed—no, that was 1982, in the Senate?

Mr. REARDON. Yes, it was.

Mr. FRENZEL. That bill was passed. At the time this matter was under the jurisdiction of the gentleman from California, Mr. Stark, who had indicated an interest in the case and indicated his approval of the bill. But, because we were unable to agree with the Senate on a number of other measures, all of them were stripped from that particular bill, and the foundation's problem remains unrelieved. The staff of this subcommittee is wholly conversant with the situation, Mr. Chairman, and I would only ask Mr. Reardon to add any additional comments he may have.

Mr. REARDON. No, I have no other additional comments other than to again emphasize that we do want to divest but the usual means of divestiture are closed because of the banking law that affects bank holding companies of which the Otto Bremer Co. is.

For example, Citicorp of New York, or Bank of America out in California, or Texas bank holding companies cannot buy us.

The McFadden Act and the Bank Holding Company Act prohibit bank holding companies from acquiring other bank holding companies located in other states.

We have worked with three investment bankers in trying to help us find foreign investors and they have shown the Otto Bremer Co. to Canadian investors, to German investors, French agricultural banks and we thought there might be a common bond because we are generally agricultural banks. When the Arab countries had a lot of money, we were even shown to some Arab investors, but we couldn't convince them that the snowdrifts in Minnesota and North Dakota were sand and we just have not been able to sell it.

The foreign investors are interested in the growth areas of the Sun Belt, the money market centers such as New York, Boston, and Chicago.

Mr. FRENZEL. Thank you very much.

Mr. Chairman, if I might comment to Mr. Weger, this committee passed a bill for the relief of his foundation in 1977.

Mr. WEGER. Or 1978.

Mr. FRENZEL. Yes, at the request of our ex-colleague Tennyson Guyer. We were all disappointed when that was not successful in the Senate. At the time the committee found the case meritorious.

I thank the chairman. I yield the balance of my time.

Mr. GUARINI. I thank you.

Mr. Reardon, you said that you are caught in the middle and you are seeking a ruling and if you get the ruling you want, that at that time you will not have any difficulty in divesting and you will divest?

Mr. REARDON. We were told in 1979, Mr. Chairman, that the proposed ruling that was to be issued in 1979 would have clarified as to whether or not the Otto Bremer Co., was an active business enterprise and it would have treated the Otto Bremer Co., as an active business enterprise.

At that point we could have started the public offering of the stock which we cannot offer now because of the cloud as to whether we can operate.

Mr. GUARINI. If you get that ruling, you can offer the stock publicly and you would not need a repeal?

Mr. REARDON. There was not a ruling. It was a regulation.

Mr. GUARINI. Whatever it was.

Mr. REARDON. If it were to be issued, and we understand there is a prospect that it could be issued, it would cure our problem and we could divest in an orderly manner as required by 4943.

Mr. GUARINI. So what you need principally is a ruling.

Mr. REARDON. Or regulation.

Mr. GUARINI. To clarify your status. At that time you don't think that being a registered bank holding company you would have difficulty in selling stock or would there be a problem because of it being a bank holding company?

Mr. REARDON. We would sell it as a bank holding company, but we would be looked upon as a normal bank holding company without restrictions that are on it now because—we could not sell all the stock in one fell swoop; it would have to be in order. We would perhaps sell 10 million now and 10 million later over a period of years.

We could not flood the market with 100 percent of the stock at this time, but we could do it, I believe, by 1989 without any problem.

Mr. GUARINI. Are you an officer or director of any of the banks?

Mr. REARDON. I am a——

Mr. GUARINI. As well as a trustee of the same?

Mr. REARDON. I am an officer and director of the Otto Bremer Co., and I was that prior to being a trustee of the foundation.

Mr. GUARINI. So you serve in a dual capacity?

Mr. REARDON. That is correct. I am a director on 2 of the 29 banks.

Mr. GUARINI. There are 29 banks in your holding company?

Mr. REARDON. That is correct.

Mr. GUARINI. And you said that you have already tried to sell in the past, but you have not been successful, is that correct?

Mr. REARDON. That is correct.

Mr. GUARINI. There is no one that is willing to buy any of the assets that you have?

Mr. REARDON. No, sir, we have not been able to find to find them. There are two substantial bank holding companies operating in the State of Minnesota, but they are prohibited from acquiring us by antitrust provisions because they have combined approximately 58 percent of the deposits in the State and for them to acquire any other control of banks and deposits would be a violation of antitrust.

Mr. GUARINI. But the individual banks you have in your holding company could be spun off individually, could they not?

Mr. REARDON. It would be difficult. We have not had buyers coming in. Additionally, we think that we would not be able to sell them at a price as we could selling them as part of a holding company.

I think we have a responsibility to the foundation to sell it as a holding company. If we can clarify this one ambiguity, we can do that.

Mr. GUARINI. Thank you.

Mr. Rossides, your foundation has real estate, is that correct?

Mr. ROSSIDES. Yes, Mr. Chairman.

Mr. GUARINI. Why is it so difficult to divest yourself of real estate?

Mr. ROSSIDES. Mr. Chairman, the real estate that the foundation owns is the passive real estate and is not needed to be divested. We have divested the excess holdings that come within the definition.

Mr. GUARINI. What is passive real estate?

Mr. ROSSIDES. Commercial office building or an apartment rental building.

Mr. GUARINI. You mean you have passive income?

Mr. ROSSIDES. Passive income.

Mr. GUARINI. Right.

Mr. ROSSIDES. The——

Mr. GUARINI. The rents and profits.

Mr. ROSSIDES. The company in question is a real estate management company, the Cafritz Co. That is one that is required to be divested. We have divested a hotel, a construction company, and some undeveloped land.

Our problem is the difficulty under the factual situation. We own two-thirds of the company and the marital trust owns one-third. We are finding it difficult to sell to a buyer because the buyer says, fine, we want you to guarantee that the Cafritz Real Estate Management Co., will continue to manage these real estate interests of the foundation which make up at least 50 percent of the income of the real estate management company.

Mr. GUARINI. That is active income that you get as management fees?

Mr. ROSSIDES. Yes.

Mr. GUARINI. So you have both kinds of income; you are actually running the business in your foundation then?

Mr. ROSSIDES. The foundation has passive income and then receives profits from a company that has active income.

Mr. GUARINI. Right.

Mr. ROSSIDES. After full taxes and so on.

They are required in managing that business to maximize the real estate profits and they do so in a highly competitive market in Washington, D.C.

Mr. GUARINI. You have interlocking directors and officers?

Mr. ROSSIDES. There are probably—I would be able to supply that. There may be two persons who are interlocking, Mr. Chairman.

Mr. GUARINI. Are you the counsel of the foundation?

Mr. ROSSIDES. Yes.

Mr. GUARINI. And of the management company, both?

Mr. ROSSIDES. Yes, Mr. Chairman.

Mr. GUARINI. Do you know or not?

Mr. ROSSIDES. I am not active in the day-to-day handling of real estate——

Mr. GUARINI. Your law firm is?

Mr. Rossides. Yes. Our real estate partner handles that.

Mr. Guarini. Is it the same president or is the trustee and the president, and the management company president different?

Mr. Rossides. The active company is different from the trustees.

Mr. Guarini. Is the trustee an officer in the active management company?

Mr. Rossides. One of them I believe is, Mr. Chairman. I can supply that.

We have had no problems. We have maximized activities. Our record is a fine record of charitable giving in Washington, D.C. We are the largest, we have given the most and we are very proud of that record, Mr. Chairman.

Mr. Guarini. I am sure that you would not come before us if you were not, and I appreciate the good work that I am sure is being done.

I sincerely say that.

However, you do have a situation that you have the same counsel, the same directors, or the same officers. I am just wondering, the people who are the officers and directors of the management company decide what the dividends and passive income of your foundation is going to be, do they not?

Mr. Rossides. The——

Mr. Guarini. Whatever you get from them is determined by what they do at the stockholders' meeting in declaring annual dividends, isn't that right?

Mr. Rossides. Yes, but——

Mr. Guarini. Is that a salutary situation for a charitable foundation?

Mr. Rossides. On the active business income, we require that they maximize that income, pay their Federal taxes and turn the rest over to the foundation.

Mr. Guarini. You require yourselves to do that, in other words?

Mr. Rossides. Yes.

Mr. Guarini. In other words, you are requiring yourselves to do what you are requiring as a trustee to do yourself?

Mr. Rossides. As a trustee under the law——

Mr. Guarini You are requiring yourself to do it?

Mr. Rossides. Yes.

Mr. Guarini. All right.

Mr. Rossides. But under the law it is the trustee's responsibility.

Mr. Guarini. But you wear two hats?

Mr. Rossides. Yes, there are two hats, Mr. Chairman. I am not trying to deny that question.

Mr. Guarini. What percentage do you get from the value of your stockholdings each year?

Mr. Rossides. I don't have those figures, Mr. Chariman. I will supply them for the committee. The percentage rate of return would be a normal rate in the real estate market here and we give substantial amounts to charity, but I will supply it and we are pleased with that percentage but I don't have it at my fingertips.

Mr. Guarini. Would you send us a letter so that we may know the——

Mr. Rossides. Let me say, Mr. Chairman, we have an advisory board. For instance, Mrs. Cafritz wisely urged an advisory board.

We have an advisory board of some of the leading citizens of Washington, the head of the—

Mr. GUARINI. I don't intend to go into that. I assume everything is being done right and there is no question on that.

Mr. ROSSIDES. We will submit that information.

[The information follows:]

Mr. Guarini asked two questions. The first question was whether or not the trustees of the Foundation also served as officers and directors of the Cafritz Company. Mrs. Cafritz and Martin Atlas, two of the three directors of the Cafritz Foundation, are President and Executive Vice President, respectively, of the Cafritz Company and members of its Board of Directors. Under their leadership, the Cafritz Company has distributed each year as dividends all of its after-tax income whereas unrelated management might well have retained a portion of those earnings to fund further growth of the business.

The second question concerned the return realized by the Foundation from its investment assets. Most of the Foundation's assets are interests in passive real estate investment properties or stockholdings in corporations which own passive real estate investment properties, all of which properties are managed by the Cafritz Company. Most of these properties have appreciated significantly in value since they were bequeathed to the Foundation by Mr. Cafritz, who died in 1964. For its fiscal year ended April 30, 1982, the Foundation realized income of 6.6 percent on the appreciated fair market value of its interests in those properties. The Foundation's return on its investment assets would have been higher but for two factors:

1. The Foundation has a one-third interest in a large tract of land opposite the Pentagon which it and unrelated parties owning 50 percent have been endeavoring to sell over the past 15 years. In 1979, the Foundation and the other owners of the tract entered into an agreement with a respected nationally known developer whereby the developer agreed to develop the tract in exchange for an option to purchase portions of the tract as development progressed. Two substantial sales of portions of the tract have been made under this agreement and negotiations are proceeding with respect to a substantial portion of the balance of the tract. As the phased development progresses and the balance of the property is sold, the Foundation's return on its investment portfolio will increase.

2. Seven of the Foundation's holdings are low income housing projects in the District of Columbia on which the Foundation realizes minimal income or, in some cases, a loss. Because of rent control and other factors, these properties cannot be sold for anything approaching their appraised or assessed value, if they can be sold at all. At the same time, continued operation of the properties, which comprise over 1,200 housing units, serves a real need for low income residential housing in the District of Columbia.

Mr. GUARINI. I am just asking whether or not your structure is proper. That is all I am questioning.

Mr. ROSSIDES. Certainly it is proper.

Mr. GUARINI. It may be fine with you, but it may not be fine with someone else not so well motivated in other parts of the country having the similar setup. That is my question.

Mr. ROSSIDES. There is also, Mr. Chairman, I know you asked the others the same question—there are—I have not thought about that fully since it had not become an issue, but there is value particularly in local communities where the fact is you do not depersonalize charitable giving.

The fact that there may be interlocking directories may not be so bad; in fact there may be a real plus there.

But, the key question is to make sure that the rules of operation are such that they cannot be abused.

Mr. GUARINI. Of course, that is an administrative problem you are giving whereas if you have an arbitrary rule the Government doesn't have to have an expensive administrative investigatory setup.

What you are asking us to do is have a question of fact in each particular case which is much more expensive in administering than having an arbitrary rule for all corporations to adhere to.

Nevertheless, what percentage of your corporation is owned or what percentage of stock does your management company have in the corporation?

Mr. **Rossides.** We have two-thirds of that stock and a marital trust which is separate, has the other third. The trustees of that are a bank, happens to be the Riggs Bank.

Mr. **Guarini.** Do you consider it marketable at all?

Mr. **Rossides.** It is very difficult to market it because the difficulty is of guaranteeing when we become a minority stockholder in this management company, say we had to go down to the 16⅔ percent, we could not guarantee a buyer that we would let them continue to manage these other properties.

It would not be prudent. That has been a great difficulty, Mr. Chairman.

Mr. **Guarini.** Sometimes one wonders whether or not foundations should have more strict rules before they are formed in the first instance, but I thank you for your testimony, Mr. Rossides.

Mr. Weger, on the Telephone Co., I understand that it is one of the last 5-cent calls left in America; is that correct?

Mr. **Weger.** That is correct, Mr. Chairman. You can still make a call for a nickel.

Mr. **Guarini.** How would you be affected by the new telephone laws with divestiture of the Bell Telephone Co.?

Mr. **Weger.** That is a question we are very concerned about because I don't know that anyone knows the answer to that, Mr. Chairman.

Mr. **Guarini.** Doesn't this put you at risk?

Mr. **Weger.** There may well be, yes, risk. It may well be that the new rules about access charges and the new rules about toll sharing may very well do that.

Mr. **Guarini.** Would it be prudent to spread your base and divest the stock that you have instead of holding on to what may prove to be a violation of the prudent man rule?

Mr. **Weger.** I will not challenge the chairman's opinion on that because I think we have to look carefuly now at that.

The AT&T divestiture requirements are a concern. As far as the Ohio Bell is concerned, which is the Bell Telephone Co. that services our interstate tolls, almost always in general conversations with them they have assured us that there will not be a loss of revenue, but that is not anything in writing and we know well that that may be the case.

So we have to examine that, but it has to be a matter of our economic judgment as to whether or not it is for the best interests of the foundation to diversity at this particular time rather than a statutory requirement.

Mr. **Guarini.** Wouldn't it, as an attorney, be generally a sound concept in investments to diversify anyway? If you were a trustee of an estate or will or trust, not necessarily a foundation, wouldn't you be required in your State to seek legal investment and diversify?

Mr. **Weger.** The prudent-man rule exists in our State.

Mr. GUARINI. Why shouldn't we expect it of foundations if we expect it of trusts?

Mr. WEGER. We are making the assumption that perhaps the holding of a company that you are totally familiar with and has a history of performing may not be a prudent investment. I am not willing to make that assumption.

Mr. GUARINI. Some of the best blue-chip companies of our country were Packard, Studebaker, and a few others that are not even around any more. They were once considered some of the finest investments that we could have.

Why wouldn't your small telephone company be a risk?

Mr. WEGER. Let me answer that by referring back to a question you asked Mr. Rossides. That is, whether or not the interlocking directorate has merit.

I do believe it does because we cannot monitor what Packard did or what Penn Central did, but we can monitor what the Telephone Service Co. of Wapakoneta does because I sit on the board of the Telephone Service Co.

I believe that the ability to monitor is important, if I could not monitor the Telephone Service Co.'s financial performance, I would say we should sell immediately.

Mr. GUARINI. Do you take insurance out, as trustees?

Mr. WEGER. Errors and omissions, yes, that type of thing.

Mr. GUARINI. Not just errors and omissions, but for other liabilities, for suits that could happen as a result of bad investments or improper management?

Mr. WEGER. I have to tell you I don't know how broad the coverage is; we do have insurance.

Mr. GUARINI. All right.

Now, do you help grass roots organizations? Do you make yourself available to small grantees seeking help; do you publish statistics and make yourself available and process applications for people who seek small types of grants?

Mr. WEGER. I would say 98 percent of our grants are scholarships in the two-county area. We do make contact with all 13 high schools in the two-county area. We talk to the guidance counsellors; we prepare posters for them to post in the schools informing them there are certain deadlines and that the Hauss-Helms scholarships are available.

We do everything that we reasonably can to inform the students in the high schools that these are available.

In addition to that, we, of course, furnish all the available information to the publishing companies that publish the availability of scholarship grants and we do for those students who are receiving scholarships and are still in college, we automatically mail them scholarship applications while they are still receiving grants from us so they can apply each succeeding year.

We try to make it as universally available to the students in the area as we can.

Mr. GUARINI. Your foundation is restricted to scholarships, is that correct?

Mr. WEGER. Yes.

Mr. GUARINI. Thank you very much, Mr. Weger.

Do you have any other questions?

Mr. **Frenzel**. No, Mr. Chairman.

Mr. **Guarini**. We thank you, gentlemen, for your testimony.

We appreciate your taking time to be here and we appreciate your testimony. Thank you.

I would like to call Mr. Barry A. Gersick, counsel of the Murphy Motor Freight Lines; Dr. Charles S. Brown, vice president of the Clara Abbott Foundation; Mr. J. Keith Nolan, counsel, the Mobil Foundation, Inc., accompanied by Philip R. Brown, property manager.

We welcome you gentlemen here and we appreciate your taking time to be here with us. Your written statements will be put into the record.

I will call on Mr. Frenzel for recognition.

Mr. **Frenzel**. Thank you, Mr. Chairman.

Mr. Gersick and Mr. Vaughn, representing Murphy Motor Freight, are headquartered in St. Paul, Minn. Again, they are within the district of our distinguished colleague, Mr. Vento.

They are representing the Murphy Motor Freight Lines which used to be a competitor of mine before I got into the public trough. They also have an interesting problem in which they are entrapped because of the way the Treasury interprets certain of our laws.

It seems to me that this particular case is one which is a little different from most which we have heard and I know the subcommittee will be keenly interested in it.

I thank you for the opportunity to present the witness.

Mr. **Guarini**. Thank you, Mr. Frenzel. Mr. Gersick, we welcome you here. You represent the Murphy Motor Freight Lines.

STATEMENT OF BARRY A. GERSICK, COUNSEL, MURPHY MOTOR FREIGHT LINES, INC., ST. PAUL, MINN.

Mr. **Gersick**. Thank you very much for this opportunity.

Thank you, Congressman Frenzel, for your keen insight into private foundation matters and your fine representation of the taxpayers generally, and residents of the State of Minnesota.

I am Barry Gersick. I am a partner in the St. Paul, Minn., law firm of Maun, Green, Hayes, Simon, Johanneson and Brehl, and we represent Murphy Motor Freight Lines, Inc., a common carrier of general commodities with 1,300 employees and headquartered in St. Paul.

The problems that Murphy Motor Freight Lines has experienced as a result of section 4941 of the code, the provision imposing an excise tax on self-dealing, are very severe in comparison to the circumstances that caused them to become subject to that tax.

In 1967, Murphy Motor Freight made a $2,500 contribution to the Wasie Foundation, a private foundation headquartered in Minneapolis. In 1971, it made a second contribution, a $6,500 contribution to the same foundation. After those two contributions, which were the only contributions the corporation ever made to the foundation, it met the definition of being a substantial contributor with respect to that foundation at that time and therefore a disqualified person with respect to the foundation.

At that time, in 1971, the foundation had received total contributions of some $51,000 and the contributions by Murphy Motor

Freight constituted about 17 percent of the total contributions. The next year, the foundation had total contributions of over $600,000; and by 1978, when the alleged act of self-dealing occurred, the foundation had total contributions of over $9½ million. Murphy's contributions then constituted less than one-tenth of 1 percent of total contributions of the foundation.

In any event, Mr. Chairman, during the time at issue, Mr. Edward Murphy, Jr. owned approximately 36 percent of the stock of Murphy Motor Freight Lines, the Wasie Foundation and related interests owned about 36 percent, and members of the public owned the remaining 28 percent. Because of the 1969 Tax Reform Act and the need for the Wasie Foundation to dispose of the excess business holdings it had in the corporation, it decided to obtain control of Murphy Motor Freight Lines through means of a tender offer to aid its disposition efforts. The tender offer failed because Mr. Murphy, the other shareholder in the company, made a countertender offer and was successful in acquiring stock from the public as well as from the Wasie Foundation.

The Wasie Foundation still had a pressing need to dispose of its stock and, being unable to do so, sought to achieve its purposes through litigation. Wasie interests commenced four lawsuits against Murphy Motor Freight Lines and its directors, charging various violations of law. In any event, the lawsuits were settled in 1978 by Murphy Motor Freight Lines agreeing to purchase the stock of Murphy Motor Freight Lines owned by the Wasie Foundation, in exchange for the Wasie interests releasing or terminating the lawsuits. They were dismissed.

The stock was purchased at a price that exceeded the bid price in the over-the-counter market by $3.75. It was paid part in cash and the remainder by an 8¼ debenture—8¼ percent was the prevailing prime rate—and the same offer was made to all public shareholders of Murphy Motor Freight Lines. The transactions were concluded with about half the public shareholders at time tendering their stock pursuant to that offer, and time passed.

The 1980, the IRS began auditing the Wasie Foundation. They saw that Murphy was a substantial contributor and therefore a disqualified person. They commenced an audit of Murphy Motor Freight Lines and alleged that the extensions of credit pursuant to the purchase transaction by Murphy of the stock from the Wasie Foundation was an act of self-dealing and proposed a first tier tax of $118,000 and corrective action costing approximately $750,000.

There is what we believe to be an exception under the Internal Revenue Code that says any transaction between a private foundation and a disqualified person that is a corporation that is pursuant to a redemption or recapitalization and is offered to all the shareholders of the corporation that gives the foundation fair market value is to be exempt from the tax on self-dealing. The Revenue Service says that is true; the redemption transaction you had was exempt but the issuance of the debenture in part payment is not pursuant to—as the language of the code reads—to a redemption, but a separate act of self-dealing as each year goes by.

This is the predicament. We think it was unintended by the code. The parties were at arm's length clearly because of the bitter litigation and disputes. and this is a provision that we think is unfair.

Mr. GUARINI. Thank you, Mr. Gersick.

[The prepared statement follows:]

STATEMENT OF BARRY A. GERSICK ON BEHALF OF MURPHY MOTOR FREIGHT LINES, INC.

My name is Barry A. Gersick. I am an attorney and partner in the law firm of Maun, Green, Hayes, Simon, Johanneson and Brehl in Saint Paul, Minnesota. I represent the law firm as well as our client, Murphy Motor Freight Lines, Inc.

The purpose of our appearance and statement is to call attention to significant inequities caused by Internal Revenue Code section 4941, which imposes an excise tax on acts of self-dealing and caused by regulations promulgated under that section of the Code.

Our specific areas of concern are:

(*a*) with the size of the contributions necessary for someone to become a substantial contributor with respect to a private foundation and thereby a disqualified person who may be taxed under section 4941 of the Internal Revenue Code, and

(*b*) with regulations that treat debentures issued pursuant to redemptions which are not acts of self-dealing under section 4941(d)(2)(F) as an extension of credit and a separate act of self-dealing, and

(*c*) with regulations that treat transactions as acts of self-dealing when in fact there is no dealing between a private foundation and a disqualified person, and

(*d*) with the inability of the Internal Revenue Service to abate the tax or corrective action to avoid additional tax where the tax or required corrective action is inequitable.

The inequities can be illustrated by the predicament of Murphy Motor Freight Lines.

FACTUAL BACKGROUND OF THE MURPHY MOTOR FREIGHT LINES, INC., TRANSACTION

In the late 1940s Mr. E. L. Murphy, Jr. ("Mr. Murphy") and Mr. Stanley L. Wasie ("Mr. Wasie") each owned 50 percent of the common stock of Murphy Motor Freight Lines, Inc. ("Murphy"), now a wholly owned subsidiary of MRFY, Corp ("MRFY").

On October 18, 1966, Mr. Wasie caused the formation of a private foundation which is now The Wasie Foundation. Over the years, Mr. Murphy made gifts of his Murphy stock to members of his family and Mr. Wasie made gifts of his Murphy stock to various persons and entities, including the Stanley L. Wasie Trust and the Donald A. Wasie Trust (collectively known as The Wasie Trusts).

On June 14, 1972, the stock of Murphy was offered to the public at an initial public offering price of $15.50 per share. After the public offering, Mr. Murphy and his family and Mr. Wasie and The Wasie Trusts continued to have equal ownership interests in Murphy. In June 1974, Mr. Wasie died.

Murphy made two contributions by check to The Wasie Foundation for a total of $9,000. The first contribution of $2,500 was made in 1967. The second contribution of $6,500 was made in 1971. After the 1971 contribution, total contributions of $51,913 had been received by The Wasie Foundation from all sources. As of December 31, 1982, over $10 million in contributions had been given to The Wasie Foundation and it had assets of over $11 million.

The terms of the agreements creating The Wasie Trusts required the Murphy common stock owned by The Wasie Trusts to be distributed to The Wasie Foundation. Because of the provisions of Internal Revenue Code section 4943, which imposes a tax on excess business holdings, The Wasie Foundation would have been forced to dispose of most of the Murphy stock that it would have acquired from The Wasie Trusts.

After Mr. Wasie's death in 1974, relations between the Wasie interests and Mr. Murphy began to deteriorate. This was caused by the fact that the earnings of Murphy had decreased, the price of the Murphy stock had fallen, the Wasie interests were not able to participate in the management of Murphy to the degree that they wanted and The Wasie Trusts did not own enough Murphy stock to control the Corporation.

On March 7, 1976, The Wasie Trusts made a public tender offer to acquire 234,000 shares of Murphy common stock at $10 per share. If the offer would have been successful, it would have resulted in The Wasie Trusts holding 51 percent of the outstanding Murphy stock. The stated purpose of the tender offer was to acquire control of Murphy and seek out possibilities for the sale of Murphy or the controlling interest in Murphy that then would have been owned by The Wasie Trusts. This tender offer was opposed by the Murphy Board of Directors. On March 11, 1976, Mr. Murphy made an offer to purchase up to 225,000 shares of Murphy common stock at

$13.00 per share. The Wasie Trusts allowed their offer to expire and tendered their Murphy shares to Mr. Murphy. Pursuant to the terms of his offer, Mr. Murphy purchased 224,707 shares on a pro rata basis from all tendering shareholders, of which 141,470 shares were purchased from The Wasie Trusts. After the completion of this tender offer, The Wasie Trusts still owned 438,680 Murphy shares or 27.6 percent of the outstanding common stock of Murphy and the relationship between Murphy and the Wasie interests continued to be antagonistic.

In March 1977, two lawsuits were commenced by The Wasie Trusts against Mr. Murphy, the directors of Murphy and The First National Bank of Saint Paul, alleging violations of the Federal Securities and Banking laws, breaches of fiduciary duty and tortious interference with a prospective business advantage, all as a result of the failure of the tender offer by The Wasie Trusts and the successful offer by Mr. Murphy. Damages in excess of $10,500,000 and equitable relief which would have placed The Wasie Trusts in control of Murphy was sought. A third action was commenced by The Wasie Trusts against Mr. Murphy and The First Trust Company of Saint Paul claiming entitlement to a solicitation fee in connection with The Wasie Trusts' tender of Murphy shares pursuant to Mr. Murphy's offer. A fourth action was commenced by The Wasie Trusts against Murphy to compel inspection or corporate records which Murphy refused to make available on the grounds that the request was beyond the scope of a stockholder's right of inspection and was made for an improper purpose.

Approximately one year after the lawsuits were started, settlement negotiations commenced. Negotiations resulted in an agreement in principal between The Wasie Trusts and the defendants which provided for The Wasie Trusts to sell all of their Murphy shares to Murphy at a price of $9.00 per share. The price was to be paid by a cash payment of $2.25 per share and $6.75 pursuant to a 7 year 8¼ percent subordinated debenture. The trustees of The Wasie Trusts also agreed to dismiss, with prejudice, all litigation against the officers and directors of Murphy, Mr. Murphy, The First National Bank of Saint Paul, and The First Trust Company of Saint Paul. An offer was made by Murphy to all other stockholders of the corporation to purchase their Murphy stock on the same terms and conditions as that agreed to with The Wasie Trusts.

After the agreement had been fully negotiated but before its execution, representatives of The Wasie Trusts suggested that The Wasie Trusts' stock be transferred to The Wasie Foundation before consummation of the settlement. The stock was in fact transferred to The Wasie Foundation on the day immediately before the day on which the settlement agreement was executed.

The $9.00 purchase price was $3.75 per share more than the last reported bid price for the common stock of Murphy on the day prior to the announcement of the agreement between Murphy and the Wasie interests. The interest rate of 8¼ percent on the subordinated debenture was equal to the prime rate of interest at the time of the transaction. At the present time, common stock of Murphy's parent MRFY (created after an exchange of one share of Murphy for one share of MRFY) is trading at 4¾ bid to 5¾ ask.

TAX PROBLEMS CREATED BY THE MURPHY TRANSACTION

In connection with a review of the income tax returns of The Wasie Foundation during the spring of 1983, the Internal Revenue Service determined that Murphy was a "substantial contributor" with respect to The Wasie Foundation and accordingly a "disqualified person" as defined by Internal Revenue Code section 4946. The Service further determined that the Murphy debenture issued to The Wasie Foundation in part payment for the redeemed stock is an extension of credit between a private foundation and a disqualified person and constitutes an act of self-dealing. The Internal Revenue Service has had meetings with us as representatives of Murphy and has issued a worksheet (attached hereto as Exhibit A) proposing first tier tax in the amount of $118,030.41, second tier tax in the amount of $2,615,826.76 and proposing corrective action which, through the end of 1982, would require Murphy to pay to The Wasie Foundation the sum of $739,129.32 and require Murphy to prepay the debenture. On behalf of Murphy we have argued to the Internal Revenue Service that Internal Revenue Code section 4941(d)(2)(F) makes an exception for the type of redemption transaction engaged in by Murphy pursuant to which the described transactions between Murphy and The Wasie Foundation are not intended to be taxed as acts of self-dealing. That provision of the Code provides:

"(F) Any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946(a)), pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value;"

The transaction in which Murphy bought stock from The Wasie Foundation was clearly a redemption and was on terms that paid to The Wasie Foundation no less than fair market value. The redemption was at a price $3.75 in excess of the bid price for the stock and the debenture bore a rate of interest equal to the prime rate. If the purchase price paid in excess of the bid price for the stock is considered additional interest, the rate of return on the debenture is over 33 percent. Further, the same offer was made to all holders of Murphy stock.

The Revenue Service argues that pursuant to its regulation, Treas. Reg. 53.4941(d)-3(d)(2) Example (2), the debenture is to be considered an extension of credit and the extension of credit constitutes a separate act of self-dealing. Code section 4941(d)(2)(F) provides clearly that "any transaction between a private foundation and a corporation * * * pursuant to any * * * redemption * * * shall not be an act of self-dealing * * *." (Emphasis added) The debenture in this case was issued to The Wasie Foundation pursuant to the redemption. The only reason for the issuance of the debenture was to pay for the stock bought by the company and therefore should not be an act of self-dealing.

We also argued to the Internal Revenue Service that the substance of the transaction settling the litigation was between the various defendants and The Wasie Trusts, not The Wasie Foundation. It was not until the day before execution of the settlement agreement that the Murphy stock was transferred from The Wasie Trusts to the Wasie Foundation. Further, we have suggested, that the purpose of the transfer by The Wasie Trusts to The Wasie Foundation was for the purpose of avoiding tax by The Wasie Trusts upon the redemption of their Murphy stock. The Wasie Trusts were the plaintiffs dismissing the lawsuits, not The Wasie Foundation.

Under such an analysis, the redemption transaction would be considered as a sale by The Wasie Trusts for cash and debenture and them a contribution by The Wasie Trusts of the cash received by them and the debenture to The Wasie Foundation. Although under these circumstances Murphy would not have been a party to a transaction with the Wasie Foundation, the applicable regulation, Treas. Reg. 53.4941(d)-2(c)(1), provides that "* * * an act of self-dealing occurs where a note, the obligor of which is a disqualified person is transferred by a third party to a private foundation which becomes the creditor under the note." Pursuant to this regulation, the Revenue Service takes the position that even where a disqualified person does not enter into a transaction with a private foundation, it can still become liable for the tax on self-dealing.

Further, the argument was made to the Internal Revenue Service that an exception should be made in this particular circumstance because Murphy was not engaging in the type of conduct that was intended to be prohibited or discouraged by section 4941. The reply of the Internal Revenue Service was that it does not have the power to abate the tax.

RECOMMENDATIONS

We believe that Murphy's situation illustrates several significant problems with section 4941 of the Internal Revenue Code and problems with the regulations promulgated under that section of the Code.

Just as the Internal Revenue Code provides exceptions to the excise tax on self-dealing for transactions pursuant to bona fide redemptions, an exception should be made for transactions between a disqualified person and a private foundation when the transaction is pursuant to the settlement of bona fide litigation between a disqualified person and the private foundation or related parties.

Also, it is obvious that where persons and corporations are making relatively small contributions to private foundations, that it is easy for them to become a disqualified person when, in fact, they have no control over the private foundation. Internal Revenue Code section 4946(b) and section 507(d)(2) define a substantial contributor as any person who has contributed an aggregate amount of more than $5,000 to a private foundation if the contribution is more than 2 percent of the total contributions received by the foundation prior to the end of that tax year. These amounts are far too low. The minimum dollar amount for contributions which cause persons to become substantial contributors should be raised to at least $50,000 in any one year and the 2 percent of total contributions to at least 10 percent. These amounts would then be sufficient to be material both to the contributor and the foundation.

The Secretary of the Treasury should be authorized to abate the taxes and corrective action under section 4941. Such authority would permit the Internal Revenue Service to abate the tax in situations like Murphy's or any one of innumerable situations where the facts might fit a technical reading of the statute but not be violative of its purpose.

Congress should adopt legislation specifically overruling the regulations relating to self-dealing that run contrary to the intent of the statute. An example of such a situation is where a debenture is issued to a private foundation by a disqualified person pursuant to a transaction fitting within the redemption exemption of the Code. The legislation should require some dealing between a priviate foundation and a disqualified person before there can be an act of self-dealing. Persons who issue promissory notes to third parties or enter into contracts with third parties should not be subjected to a tax on self-dealing.

The code provides that self-dealing can be any lending of money or other extension of credit between a private foundation and a disqualified person. The wording of the Code section requires that there is actually a loan of money between the private foundation and the disqualified person. Where a third party makes a contribution to a private foundation of a note of a disqualifed person or a private foundation purchases such a note, the disqualified person does not borrow money from the private foundation and accordingly the disqualified person should not be taxed.

The same rational applies to any contract between a disqualified person and a third which is later assigned by the third party to the private foundation. For many years the Wasie family and the Murphy family have jointly owned a large truck terminal that is leased to Murphy at fair market rentals. The lease requires periodic appraisals of the value of the terminal and the rental is determined by a percentage of the appraised value. Under the theory of the regulations, if the Wasie family would unilaterally transfer its interest in the terminal to The Wasie Foundation, Murphy would be a tenant of The Wasie Foundation and the transaction would arguably be an act of self-dealing subject to tax. Under the theory of the regulation, this would be the result even though Murphy had no way of preventing the Wasie family from transfering their interest to The Wasie Foundation and despite the fact that Murphy would not have dealt, in any way with The Wasie Foundation.

We recognize that the law is complicated and that all the complications cannot be known or appreciated at the time bills are enacted into law. That has been the case with the provisions of the 1969 Tax Reform Act relating to private foundations as evidenced by the problems raised by the case of *Adams v. Commissioner*, 72 T.C. 81 (1979). This case held that under the law, as it read at the time, the Tax Court did not have the jurisdiction to determine a deficiency of the second tier tax under Section 4941(b). Congress acted quickly to remedy the problem in the situation where its laws obviously were in error and prevented the Internal Revenue Service from collecting taxes that were in fact due. Congress should be just as quick to remedy problems when there are errors which cause inequities for taxpayers.

In this case, the Internal Revenue Service proposes a penalty of millions of dollars solely because Murphy, as a gesture of goodwill, contributed $9,000 to The Wasie Foundation.

Worksheet Copy

Report of Examination - Exempt Organizations

1. Form No.: 4720

2. Key District Office: Chicago

3. Date of Report:

4. Name and Address of Taxpayer:

Murphy Motor Freight Lines, Inc.
P.O. Box 43640
St. Paul, Mn. 55164

5. Name and Address of Private Foundation *(If different from Item 4)*:

Wasie Foundation
909 Foshay Tower
Minneapolis, Mn. 55402

6. Social Security or Employer Identification No.: 41-0430220

7. Tax Period: 1980, 1981 1982

8. Private Foundation's Employer Identification No. *(If different from Item 6)*: 41-0911636

9. Tax Period:

10. Report Preparer's Name: Roy Swanson

11. Agreement Secured *(Check one)*: ☐ Yes ☐ No ☐ Partial

12. Findings Discussed With *(Name)*: Mr. Barry A. Gersick

13. Agreement Date:

14a. Summary of Proposed Adjustments				14b. Penalty	
Internal Revenue Code Section (1)	Period Covered by Examination (2)	Amount of Tax (3)	Additional Tax *(Private Foundations)* (4)	Internal Revenue Code Section (1)	Amount (2)
4941(a)(1) 4941(b)(1)	1980	20,384.45	1,069,348.20		
4941(a)(1) 4941(b)(1)	1981	42,183.01	871,942.28		
4941(a)(1) 4941(b)(1)	1982	55,462.95	674,536.28		

Remarks:

You are required to file a return on Form 4720 for the year 1983 and pay any tax owing with respect to the act of self-dealing continuing into this year.

EXHIBIT A

15. Schedules and Exhibits Attached

Form **4621** (Rev. 1-77) Department of the Treasury - Internal Revenue Service

Extension of Credit to a Disqualified Person

In 1971 Murphy Motor Freight Lines, Inc. contributed in excess of $5000. to the Wasie Foundation. This contribution was more than 2% of the total contributions received by the Wasie Foundation in 1971. As a result of this contribution Murphy Motor Freight Lines, Inc. became a substantial contributor to the Foundation and a disqualified person as defined by section 4946 of the Internal Revenue Code.

Section 4941(a)-1 of the Code imposes an excise tax on each act of self-dealing. The rate of tax is 5 percent of the amount involved with respect to the act of self dealing for each year (or part thereof) in the taxable period.

Section 53.4941(d)-1(a) of the Regulations defines self-dealing as "any direct or indirect transaction described in section 53.4941.(d)-2. For purposes of this section, it is immaterial whether the transaction results in a benefit or detriment to the private foundation.

Section 53.4941.(d)-2(c) reads in part "Loans-(1) In general. Except as provided in subparagraphs (2),(3), and (4) of this paragraph, the lending of money or other extension of credit between a private foundation and a disqualified person shall constitute an act of self-dealing."

Murphy Motor Freight Lines, Inc. issued 8¼% subordinated eight year debentures to the Wasie Foundation as part of the purchase price paid for Murphy Motor Freight Line, Inc. stock which was owned by the Wasie Foundation. These debentures are an extension of credit by the Wasie Foundation to Murphy Motor Freight Lines, Inc. after December 31, 1979. See Regulations 53.4941.(d)-4(c)(4).

Where the use of money or other property is involved, the amount involved shall be the greater of the amount paid for such use or the fair market value of such use for the period for which the money or other property is used. Regulations 53.4941 (e)-1(b)(1)(ii). For the year 1980 the fair market value of such use has been determined to be $ 407,689.02 computed using the prime rate of interest in January 1980 of 15¼% times the outstanding amount of debentures for the year. For the year 1981 the fair market value of such use has been determined to be $ 435,971.14 computed using the prime rate of interest in January 1981 of 20% times the outstanding debentures for the year. *

Section 4941(b) imposes an additional tax equal to 200 percent of the amount involved if the act of self-dealing is not corrected within the taxable period as defined in section 4941(e)(1) of the Code. Correction is defined as undoing the transaction to the extent possible, but in any case placing the private foundation in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards. See section 4941(e)(3) of the Code.

* For the year 1982 the fair market value of such use has been determined to be $265,598.65 computed using the prime rate of interest in January 1982 of 15.75% times the outstanding debentures for the year.

Correction of the act of self dealing will require you to pay off the outstanding debentures held by the Wasie Foundation. In addition you will be required to pay to the Wasie Foundation the excess of the fair market value of the use of the money (Highest rate of interest occurring during the correction period) over the amount actually paid for such use until such termination.

Computation of tax on self-dealing 4941(a)(1)

Act	Amount involved	Initial tax 5% of the amount involved	Tax Liability to be Reported on Annual Return of Excise Tax		
			1980	1981	1982
(1)	$2961090 times 15.25% times .417 = 188303.11				
	2467575 times 15.25% times .583 = 219385.91				
	407689.02	$20384.45	20384.45	20384.45	20384.45
(2)	$2467575 times 20.% times .417 = 205795.75				
	1974060 times 20.% times .583 = 230175.39				
	435971.14	$21798.56		21798.56	21798.56
(3)	$1974060 times 15.75% times .417= 129651.32				
	1480545.times 15.75% times .583= 135947.33				
	265598.65	$13279.94			13279.94
			20384.45	42183.01	55462.95

Computation of additional tax 4941(b)(1)

Act	Amount involved	Additional tax 200% of the amount involved
(1)	$2961090 times 20% times .417 = 246954.90	
	2467575 times 20% times .583 = 287719.24	
	534674.14 times 200%=	$1069348.20
(2)	$2467575 times 20% times .417 = 205795.75	
	1974060 times 20% times .583 = 230175.39	
	435971.14 times 200% =	871942.28
(3)	$1974060 times 20% times .417 = 164636.60	
	1480545 times 20% times .583 = 172631.54	
	337268.14 times 200% =	674536.28

The fair market value of the property or the use thereof, as the case may be, shall be determined as of the date on which the act of self-dealing occurred in the case of the initial taxes imposed by section 4941(a) and shall be the highest fair market value during the correction period in the case of the additional taxes imposed by section 4941(b). Regulations 53.4941.(e)-1(b)(3).

Mr. GUARINI. Dr. Brown, you represent the Clara Abbott Foundation.

STATEMENT OF CHARLES S. BROWN, VICE PRESIDENT, CLARA ABBOTT FOUNDATION

Mr. CHARLES BROWN. I am Charles S. Brown. I am vice president of the Clara Abbott Foundation. I appear today to bring to the subcommittee's attention certain guidelines, in the form of revenue procedures, issued by the Internal Revenue Service, which have forced our foundation drastically to reduce our scholarship and educational loan programs at the very time when educational costs are rising, and President Reagan has called for increased voluntarism and private sector initiatives in these areas to take the place of reduced Federal spending.

We want to respond to the President's call and to the increased needs of our student applicants, but we are prevented from doing so by the Service's revenue procedures. We welcome these hearings and the opportunity to bring this critical problem to the attention of this subcommittee.

First, permit me to give you some background information about the Clara Abbott Foundation. The Foundation was formed in 1940 pursuant to a bequest in the will of Clara Abbott, the widow of the Founder of Abbott Laboratories, the Illinois-based world health care company. The will mandated the use of the bequest for the benefit of active and former employees of Abbott Laboratories and their dependents. This bequest, and earnings from it, now comprise the principal assets of the foundation. Contributions from other individuals have been received from time to time, but Abbott Laboratories has made no contributions to the foundation.

This is very unusual for a company-related private foundation. Most such foundations are funded in whole or in substantial part by tax-deductible contributions from the corporations which formed them. The fact that the Clara Abbott Foundation is different—that it has never received funds from Abbott Laboratories—is significant to this testimony.

Since 1945, the board of directors of the foundation has used a significant portion of the annual foundation income for the purpose of granting college scholarship and educational loans to children of active and former Abbott employees who could demonstrate the requisite financial need and academic promise in furthering their education. Since the inception of the program, the foundation has made aggregate scholarship grants in excess of a total of $4 million and aggregate educational loans of in excess of a total of $1 million.

Once a scholarship or loan has been granted, it is generally renewed for the remaining academic years if the student continues to meet the academic requirements of the college or university and continues to demonstrate the requisite financial need.

The program has always been administered to favor the children of lower paid employees, that is, those who might not be able to attend college without some financial assistance. For example, for the academic year 1982–83, the combined annual income of the parents of a student receiving a foundation scholarship or loan averaged $26,061, and no aid whatsoever was granted to any student whose parents' combined annual income was in excess of $56,000.

It has also been the philosophy of the foundation to encourgage self-help and to provide assistance to as many students as its limited available funds would permit. Under this philosophy, the foundation makes numerous grants, each of which is of modest size and is substantially less in most instances than the aggregate amount needed to defray tuition, room, and board. Thus, during the current academic year just ended, the average annual scholarship for a beginning student was $671 and the average educational loan in the foundation's reduced loan program was $2,680. In addition, no students may receive both a scholarship and a loan; they receive one or the other. In this way, the foundation is able to give some aid to a larger number of students requiring financial help to further their education.

Attached to this testimony is a table which summarizes the scholarships and educational loans made to beginning students by the foundation for the academic years 1976–83. From this table, it can be seen that the foundation has made no educational loans to beginning students during the past 2 academic years. This is not because the needs of its student applicants have decreased. Quite the opposite its true. The foundation has been forced to discontinue its student loan program to remain in compliance with the IRS guidelines, a result which is highly undesirable from our point of view, and I submit, undesirable as a matter of public policy. Let me explain how this came about.

In 1976, the Internal Revenue Service issued revenue procedure 76–47, which set forth guidelines to determine whether scholarship grants made by a private foundation under an employer-related program are taxable expenditures under section 4945 of the Internal Revenue Code. The avowed purpose of these guidelines was to assure that scholarships were granted on an objective and nondiscriminatory basis and were not a form of disguised compensation to the parent employee.

Most of the requirements in these guidelines were reasonable and were already part of the foundation's policies. For instance, under the procedure, grants must be made by an independent selection committee and must be based solely on objective standards, such as need and academic performance.

Only one requirement has caused the foundation concern from the outset. This is the so-called percentage test in section 4.08 of revenue procedure 76–47. It sets a maximum limit on the number of scholarships which the foundation may grant to beginning students in any year. To meet the percentage test, the number of students receiving scholarships may not exceed, alternatively, 25 percent of the students who applied or 10 percent of the students who were eligible to apply.

In other words, the foundation required by the Internal Revenue Service to turn down three out of four scholarship applicants, irrespective of their financial need, or alternatively to limit its awards to only 1 in 10 of those who may have been eligible to apply. This is a severe and strange test—requiring a charity to do less than that for which it is financially capable to prove its good faith to the Government.

The foundation applied for administrative relief from the percentage test to the Internal Revenue Service on the basis that the absence of company contributions in the foundation made it less likely, if not impossible, that disguised compensation could be present. However, no relief was afforded.

The foundation's problems were significantly compounded in 1980 when revenue procedure 80-39 was issued by the IRS, extending the same rules to educational loans and taking the startling position that scholarships and loans must be treated the same and must be aggregated for purposes of meeting the percentage tests. This meant that if the foundation was to continue its scholarship program at comparable levels, it was forced to sacrifice the loan program. Thus, to comply with revenue procedure 80-39, beginning in the fall of 1981, the foundation loan program for beginning students was eliminated. Since then, the foundation has given loans only on renewal applications to prior loan recipients. In the year 1984, unless the rules are changed, the loan program will be entirely extinct.

In addition, the scholarship program has also been significantly curtailed. In the spring of 1983, the foundation board of directors increased the budget for the scholarship and loan program. Based on an initial review of applications, the committee would have granted 381 beginning scholarships for the academic year 1983-84. However, the IRS-mandated percentage tests required the elimination of 60 scholarships that would have otherwise been granted.

These results are highly unfortunate. We feel that the Federal Government should encourage, or at least remain neutral toward private programs which assist students in financing their college education. It is particularly troublesome that these rules are being applied at a time when the Federal Government is substantially reducing its educational loan program and looking to the private sector to do more, not less, in responding to the financial needs of college students.

Since the publication of revenue procedure 80-39, the foundation again applied to the IRS for administrative relief from the application of the percentage tests, asking at a minimum that separate percentage test apply to its scholarship and educational loan programs. The foundation was recently informed that it has again been denied any relief. Thus we have exhausted our administrative remedies.

We believe the percentage test limitations in revenue procedure 76-47 and revenue procedure 80-39 constitute an unreasonable use of administrative discretion and have the effect of distorting and undermining the purposes of section 4945 of the code. We hope the interest of your subcommittee and its staff and the forum offered by these hearings may encourage the IRS to reconsider its position and revise the percentage tests to allow separate percentage limitations for scholarships and loans or to eliminate such percentage restrictions altogether.

If the Service does not voluntarily make such a change, we urge that this subcommittee recommend corrective legislation to amend section 4945 of the code to remove the Commissioner's discretion to impose this type of arbitrary test for purposes of approving grant procedures.

We thank you for the opportunity to express these views. We hope you may find a way to help us regain the freedom and flexibility to respond to the growing financial needs of our student applicants and to grant more scholarships and educational loans.

Mr. GUARINI. Thank you very much, Dr. Brown.

[The tables follow:]

THE CLARA ABBOTT FOUNDATION

The following tables summarize the scholarships and loans made by the Foundation to beginning students for the academic years 1976–1873:

SCHOLARSHIP PROGRAM

Academic year	Number of scholarships	Aggregate scholarship dollars	Average scholarship amount
1976–77	186	$82,950	$445
1977–78	125	51,250	410
1978–79	183	94,950	519
1979–80	281	157,100	559
1980–81	343	208,250	607
1981–82	383	297,575	777
1982–83	443	297,103	671

LOAN PROGRAM

Academic year	Number of educational loans	Aggregate loan dollars	Average loan amount
1976–77	23	$40,605	$1,765
1977–78	48	88,750	1,849
1978–79	37	76,590	2,070
1979–80	45	95,500	2,122
1980–81	100	199,885	1,998
1981–82	0	0	0
1982–83	0	0	0

Mr. GUARINI. The Mobil Foundation, Mr. J. Keith Nolan, counsel.

We welcome you, sir, and Mr. Phil Brown, accompanying you.

STATEMENT OF J. KEITH NOLAN, COUNSEL, MOBIL FOUNDATION, INC., ACCOMPANIED BY PHILIP R. BROWN, PROPERTY MANAGER

Mr. NOLAN. Thank you, Mr. Chairman.

I am accompanied by Philip R. Brown, property manager of Mobil Foundation.

Mobil is a private foundation that is funded annually. It does not have an endowment. It is funded by donations of real estate that is surplus to the needs of Mobil Oil Corp. Our subject, the requirement of certain private foundations to distribute 100 percent of their supporting contributions, the so-called passthrough requirement, is found in section 170(b)(1)(D)(ii) of the Internal Revenue Code. That section contains a definition of certain private foundations required to distribute all of their supporting contributions within the taxable year of receipt or 2½ months thereafter.

In the case of real property received by a foundation such as this, this necessitates that all the properties be received, sold, and the proceeds from the sale distributed within that limited timeframe, which ends 2½ months after the close of the taxable year. If the foundation fails to meet that test, then its donor or all of its donors—if there are more than one—will incur an adjustment to their contributions of all appreciated properties which will be equal to the amount of capital gains tax that would have been payable had the property been sold at market value. Flunking this requirement by $1 means that the adjustment is made to every donor's contributions deduction.

The problem with the passthrough requirement is that it is very difficult for a private foundation to receive and sell real properties within the confines of that single taxable year. Mobil Foundation's experience is that on average it takes approximately a year to sell a real property which is donated to the foundation. No sales effort can begin until the property is received by the foundation. Once received, the property has to be exposed to the market to obtain the best and highest offer.

The market is somewhat limited because a private foundation in this position is looking for an all-cash offer. It is difficult to provide seller financing. If it does so, it risks flunking the pass-through requirement because it will suffer a cash shortfall by reason of the mortgage. Once the buyer is found, specific contract details have to be worked out. Frequently, a buyer has to obtain zoning, environmental, or other local governmental approvals which take a considerable amount of time.

Mobil Foundation's property manager has found that, due to this passthrough requirement, he normally has to reject approximately 25 percent of the properties that Mobil Oil Corp. offers or proposes to contribute to the foundation. The experience is, 25 percent of those simply have to be turned away because of this passthrough requirement.

In our prepared statement, Mr. Chairman, I have attempted to draft a proposed amendment to solve or ameliorate this problem. In doing so, we took a conservative stance and tried to retain the existing passthrough statutory scheme. Our proposal would allow a period of 3 years from the time the contribution of property is received by the foundation to the time that the proceeds from the sale would have to be distributed. Our proposal lacks tax simplification.

We also support Congressmen Conable, Frenzel, and others' proposal, H.R. 3043, which would delete the passthrough provisions I have described. Their bill achieves greater simplification of the code and, of course, accomplishes other purposes. The passthrough represents an unnecessary complexity in the code and constitutes a major impediment to greater private foundation support of public charities.

We submit that either of these proposed amendments would substantially increase the amount of real estate which could be contributed to private foundations and would therefore result in more cash being channeled through private foundations to public charities.

Thank you, Mr. Chairman.

Mr. GUARINI. Thank you very much, Mr. Nolan.
[The prepared statement follows:]

STATEMENT OF J. KEITH NOLAN ON BEHALF OF MOBIL FOUNDATION, INC.

Mr. Chairman and Members of the Committee: My testimony is offered on behalf of a client, Mobil Foundation, Inc., a private foundation supported by Mobil Corporation and its affiliates, and concerns the requirement of certain private foundations to distribute 100 percent of their supporting contributions. I am accompanied by Philip R. Brown, Property Manager of Mobil Foundation, whose office is at 150 East 42nd Street, New York, N.Y. 10017 (Tel. (212) 883-3410). Mr. Brown is prepared to answer questions on the professional real estate aspects of this subject.

INTRODUCTION

In order for private foundations' donors to be able to deduct the fair market value of contributions of appreciated property without adjustment for capital gains tax, the foundations must distribute an amount equal to 100 percent of the contributions received during the taxable year to qualified charities within such year or two and one-half months thereafter. This pass-through requirement normally necessitates that the private foundation sell any appreciated real property contributions within or immediately following the taxable year in which they are received in order to raise funds to meet the distribution requirement. The problem with this rule is that real property is illiquid and cannot realistically be sold within a limited time frame except at distress prices. Thus private foundations have difficulty complying with the pass-through requirement and are thereby seriously inhibited in their abulity to accept funding by means of appreciated properties.

DISCUSSION

Under Section 170(e)(1) of the Internal Revenue Code, taxpayers who contribute appreciated property to a private foundation must reduce their charitable contributions deduction by a formula amount designed to recapture the capital gains tax that would have been payable if the property had been sold for its fair market value. Under subsections 170(e)(1)(B)(ii) and (b)(1)(D)(ii), such reduction is not required to be made in the case of contributions to private foundations which, within two and one-half months following the close of the taxable year, make distributions to qualified charities equal to 100 percent of the contributions received. This rule is usually referred to as pass-through requirement.

Many corporations and individual foundation benefactors fund their foundations to the extent possible with appreciated real properties in order to realize the full benefit of subsections 170(e)(1) and (b)(1(D)(ii). So long as they limit total contributions to amounts which can be distributed by the foundation within the requisite period, it makes no sense for these donors to sell their appreciated property and pay the capital gains tax thereon, and then to contribute the remaining cash to charity. Contributing the property to a foundation so that it may sell the property saves the capital gains tax and provides the donor and the foundation with a greater amount of cash with which to fund a program of charitable giving.

The 100 percent pass-through requirement is one of the more complex provisions of the Internal Revenue Code and appears to be unduly restrictive respecting the funding needs of private foundations. The primary problem presented by the pass-through requirement is that frequently real properties cannot be sold within the requisite 14½ month period. This is particularly so as to large surplus properties with which major corporations often fund their private foundations, and it is always a problem where properties are contributed near the end of a taxable year.

Where a private foundation receives a real property donation which it desires to sell, the offering, negotiation and sale of the property must be carried out entirely by the foundation and not by the donor. This precludes commencing any sales effort until the contribution of the property to the foundation has been completed by a deed of gift.

In order to sell a valuable commercial or unimproved property, a considerable amount of time is usually required for the private foundation to carry out all of the steps necessary to complete the sale. The property must be shown to and listed with brokers. Advertisements must be placed in newspapers, signs posted on the property, and sometimes offering brochures must be prepared with surveys, aerial photographs and descriptions of the surrounding area.

The property must be exposed to the market for a long enough period of time for the foundation to be satisfied that any offer accepted is the highest one likely to be received. Prior to the acceptance of any offer, considerable negotiation may be required. Prospective purchasers must be evaluated as to their credit worthiness and their ability to complete the purchase. Once an offer is accepted, a detailed contract of sale must be negotiated and executed.

All buyers require considerable time between execution of the contract of sale and the closing. During this post-contract period, the buyer must complete arrangements for any financing, conduct a detailed title search and obtain title insurance. The buyer must also obtain all zoning permits and local governmental approvals. This latter process can be the most time consuming, because for this purpose a buyer is often required to submit precise plans, revised surveys, detailed engineering and architectural data, and any required environmental or traffic impact studies. This latter process can sometimes involve revised applications, amended surveys and plans and one or more appeals. It is therefore not unusual for more than a year to be required from the time a property is received by a private foundation to the closing of the sale.

In the context of practical constraints presented by the pass-through limitation, it should be noted that it normally precludes a private foundation from participating in the financing of a sale of real property. This is because, in order to meet the pass-through requirement, the foundation must generate cash with which to make its qualified charitable distributions within the requisite period. If the foundation takes back a mortgage from the buyer as part of the selling price, it will have a cash shortfall for purposes of the pass-through requirement equal to the amount of the mortgage. This inability to accept a purchase money mortgage can affect the marketability of a property, either by requiring the foundation to accept a lower selling price or by requiring a longer period of exposure to the market to obtain a suitable cash offer.

The private foundation rules under the Tax Reform Act of 1969 partially dealt with the above problems by providing a five-year carryover of so-called excess distributions. However, the mechanics of this carryover are such that a private foundation and its supporting donor cannot rely with any certainty on having more than the above mentioned 14½ month period in which to sell the property. The five-year carryover rule operates as follows:

(a) Section 170(b)(1)(D)(ii) provides that private foundations must make qualified distributions of 100 percent of contributions received within the taxable year of receipt or two and one-half months thereafter "in accordance with Section 4942(h)."

(b) Section 4942(h) provides ordering rules, namely, that distributions are treated as first out of any retained income, then out of the current years income, then out of corpus.

(c) Section 4942(i) provides that excess distributions made in any of the five preceding years shall be applied to reduce the amount required to be distributed in the current year.

While helpful, the five-year carryover does not permit any averaging of excesses and deficiencies in qualified distributions. It only permits unused positive excess distributions from any of the preceding five years to offset a shortfall in distributions in the current year. If there are insufficient excess distributions available from prior years, a shortfall in the 100-percent distribution requirement results in the immediate taxation of unrealized gains of all donors on properties contributed in the current year. An excess distribution in a subsequent year cannot be carried back to the year of the shortfall to remedy this timing problem.

The rigidity of this one-way arrangement is apparent when one considers the relatively limited situations in which private foundations generate excess distributions available for carryover. These would normally arise from either of the following situations:

(1) The sale of contributed properties by the foundation at prices exceeding their appraised value at the time of donation; or

(2) The timing phenomenon attributable to the failure of a private foundation to sell enough properties to meet the pass-through requirement in a prior year, because when the unsold properties are finally sold in a later year, the distribution of all available cash would create an excess distribution.

The first situation may often generate small excess distributions, but it cannot be relied upon to provide consistent surpluses. The second situation is simply an undesirable timing phenomenon and illustrates one of the most inflexible aspects of the five-year carryover rule, that is, the inability to carryback excess distributions to prior years. If a foundation fails to satisfy the pass-through requirement in a given year, the future excess distribution credits it can earn in later years when its sales catch up with distributions do nothing to reduce the tax penalties incurred in the year the failure occurs. The foundation will simply fail to meet the pass-through requirement and thereby cause its donors to incur capital gains tax on the contributed properties.

The statutory framework of the pass-through requirement appears to be in conflict with one of the basic principles of the Internal Revenue Code, namely, the concept of matching offsetting items (such as gains and losses) occurring in different years. As shown above, the five-year adjustment period of the pass-through rule, by only allowing excess distributions to be carried forward, tends to disconnect major excess distributions from the distribution shortfalls which created them, because shortfalls in distributions normally lead to the excesses in subsequent years.

PROPOSALS

We respectfully call the attention of this Subcommittee to H.R. 3043, a bill introduced by Congressmen Conable, Shannon, Frenzel and Gephardt, to amend the Internal Revenue Code to remove certain impediments to effective philanthropy of private foundations. This proposed amendment would eliminate the pass-through requirement for private foundations altogether by deleting from subsection 170(e) of the Code the adjustment to the charitable deduction of donors in the case of long term capital gain real property contributed to private foundations, as currently required by clause (1)(B)(ii) of such subsection. The amendment would also delete section 170(b)(1)(D) which contains the pass-through requirement for private foundations.

We support this proposal because it would eliminate the problems we have described and because it has the merit of considerably simplifying the private foundation provisions of the Internal Revenue Code.

Prior to learning of the introduction of H.R. 3043, we attempted to formulate our own proposed amendment to the pass-through requirement. Our proposal is narrower in scope, as it is designed to make minimal changes to the present statutory scheme and to meet the objections of those who believe that the basic pass-through requirement for private foundations is a policy which should be preserved.

In formulating such a proposal, we concluded that the minimum change necessary to solve the problems we have described would be to extend the time allowed for private foundations to sell appreciated real properties received as contributions to a period of three years.

We also concluded that the solution which would be most consistent with the present statutory scheme would be to provide under section 170(b)(1)(D)(ii) that contributions of real property not be included in the distribution requirement of section 4942 until the third year following the taxable year of the contribution.

The definition in section 170(b)(1)(D)(ii) establishes the distribution requirement as "100 percent of such contributions," that is, all of the contributions received during the taxable year. This 100% distribution requirement could be revised to read: "100 percent of distributable contributions as defined in Section 4942(k)."

A new subsection 4942(k) could then be added, as follows:

> "(1) For purposes of Section 170(b)(1)(D)(ii), distributable contributions include:
>
> "(i) All contributions of cash and property, other than real property, received during the taxable year,
>
> "(ii) All contributions of real property sold during the taxable year which were received during the three immediately preceding taxable years, and
>
> "(iii) All real property held at the close of the taxable year which was received as a contribution in the third taxable year preceding the taxable year.
>
> "(2) For purposes of calculating distributable contributions, all property shall be taken into account at its fair market value as of the date it was received as a contribution."

The foregoing amendment would ensure that real properties received as contributions by private foundations entered into the pass-through requirement in the year sold or within the third taxable year, whichever is sooner.

A correlative issue is how to deal with the adjustment to the donor's charitable contribution under section 170(e)(1)(B), which requires adjustments to the charitable donation on each donor's tax return in the event the donee private foundation fails to meet the pass-through requirement for the taxable year. Our proposed amendment, by deferring the distribution requirement on real properties up to three years, would necessitate a change in this provision to avoid filing and audit problems for affected donors. In this regard, we would recommend that section 170(e)(1) be amended to provide for recapture in a subsequent year of any disallowed charitable contributions, along the lines presently provided by sections 47, 1245 and 1250 of the Code (involving recapture of investment tax credits and depreciation). While the existing formula of section 170(e)(1) for adjusting the charitable deduction by the avoided capital gain would be retained, it would appear to be necessary to restructure such subsection. It is suggested that real properties be excluded from clause (e)(1)(B) and that a new paragraph be added to subsection 170(e) to provide for recapture of the requisite amount of gain on the tax returns of all affected donors in the year of the foundation's sale of the real property, or in the third year, as appropriate.

It is conceded that H.R. 3043 will achieve considerably more tax simplification than our proposals. The attempt to preserve the pass-through requirement of the Code in modified form does not leave much room for simplification. But we have outlined our more complex proposal to indicate what we believe to be the minimum statutory relief necessary to remove a serious constraint on private foundations. It is submitted that this narrower, more complex amendment is the appropriate solution only if this Subcommittee concludes that the pass-through requirement represents a vital policy objective worth preserving in modified form, and that such objective is more important than tax simplification.

It is submitted that there would be no material revenue loss associated with any of these proposed amendments, because it is unlikely that the Treasury receives any significant amount of revenue from the pass-through requirement. The primary function of the pass-through requirement appears merely to serve as a restraint on contributions of appreciated properties to private foundations, rather than as any source of revenue.

CONCLUSION

It is submitted that the donors who are most constrained by the operation of the pass-through requirement and carryover limitation are those with the largest amounts of appreciated real properties to donate, companies and individuals fortunate enough to own large amounts of real property no longer needed for business or personal use. Furthermore, the pass-through requirement together with the five-year carryover provision virtually preclude funding a private foundation's charitable distributions budget for several years in advance, or building up a foundation's endowment, with very large property donations. Therefore, if the pass-through limitation were liberalized it would greatly increase contributions of real properties to private foundations and would substantially expand the capacity of private foundations and their donors to support public sector charities.

It is therefore submitted that any of the amendments we have discussed would eliminate a major existing impediment to greater private foundation support of public charities.

Mr. GUARINI. Mr. Frenzel?

Mr. FRENZEL. Thank you, Mr. Chairman.

I would like to ask Mr. Gersick a question: If you are obliged to do what Treasury would have you do without the relief of the bill which is now in preparation and which I intend to introduce, what will be the net revenue effect for the Treasury?

Mr. GERSICK. The net efffect to the Treasury would most likely be a loss. The reason for that is this: The proposed first tier tax by the Revenue Service for the years 1980, 1981, and 1982—we haven't gotten 1983 yet in their proposals—is $118,000. They have requested that the corrective action to be taken by Murphy Motor Freight Lines would be a cash payment to the foundation of approximately three-quarters of a million dollars, and they also have proposed a second tier tax of $2.6 million. Assuming the first tier tax was paid, the corrective action of the payment of the three-quarters of a million was made, and the debentures were prepaid as well as suggested by the IRS, there would be a loss to the Treasury of approximately $200,000. The Treasury would receive the $118,000 of tax, but Murphy Motor Freight Lines would be entitled to a deduction for tax purposes of the $750,000 payment to the foundation, which at their approximate rates would achieve a tax reduction of $300,000.

So if you net the $300,000 tax benefit against the $118,000 direct payment in tax, there would be approximately $200,000 lost to the Treasury.

Mr. FRENZEL. The Treasury's ruling is shooting itself in the foot, in other words? At least, the taxpayer?

Mr. GERSICK. As a goal to raise money for the Government, it is, yes.

Mr. FRENZEL. You have appealed as far as you can with the Treasury, and Treasury has ruled adversely?

Mr. GERSICK. That is not quite correct. Right now we are at the district level with the IRS, and we are about to conclude matters with them. Then we will proceed administratively within the Service. We have been led to believe that even though they have some sympathy for our problem, their hands are tied because of the regulations directly on point against Murphy Motor Freight Lines' position.

Mr. FRENZEL. Thank you very much.

Mr. Chairman, I yield the balance of my time.

Mr. GUARINI. Thank you very much.

Mr. Gersick, the case with the IRS is still ongoing?

Mr. GERSICK. Yes, sir; it is.

Mr. GUARINI. What level is it at now?

Mr. GERSICK. It is at the district level. Two conferences have been held with the IRS agents that have been assigned the case; and there has been one conference with the group chief of the agent.

Mr. GUARINI. Still at the field level?

Mr. GERSICK. It has not progressed to the appeals level.

Mr. GUARINI. Your problem is that you take quarrel with the self-dealing rule. You would rather see an arm's length rule?

Mr. GERSICK. We take quarrel with the applicability of the tax on self-dealing to this type of a transaction for several reasons. One of the reasons we believe is that this, even though defined by the statute as an act of self-dealing, does not contain the dangers of most of the acts of self-dealing, because of the fact here the parties were at arm's length. They were engaged in bitter litigation for a period of time; they were in litigation for control of the corporation.

Mr. GUARINI. Arm's length is a subjective test and you would be the judge of whether or not it were arm's length; whereas in self-dealing, it would not be subjectively but objectively decided.

Do you quarrel with that rule?

Mr. GERSICK. We don't advocate a subjective test that defines what fair market value is or arm's length dealing. We think there are certain exceptions presently in the code that say when those exceptions are met, it is——

Mr. GUARINI. Wouldn't there be more protection for the foundations if we had a self-dealing rule instead of the difficulty of administering a subjective arm's length rule?

Mr. GERSICK. I think that it would definitely be more difficult to administer if you had that sort of subjective test. As far as protection for foundations, the provisions against self-dealing go both ways. But I think the protection that presently exists for foundations is beneficial. But there can be certain changes for certain transactions which would not affect the protection at all.

Mr. GUARINI. Thank you, Mr. Gersick.

Dr. BROWN, the foundation that you have is restricted to scholarships for students of Abbott, the company; is that correct?

Mr. CHARLES BROWN. That is only one of the programs of this foundation. It is not restricted to scholarships and loans.

Mr GUARINI. What percentage of it is scholarships for students?

Mr. CHARLES BROWN. Probably—scholarships and loans together constitutes about 40 percent of the annual disbursements of the foundation each year.

Mr. GUARINI. What is Abbott themselves? Do they give preference to the children of employees?

Mr. CHARLES BROWN. By bequest, the beneficiaries have to have been either employees or dependents of current or former employees of Abbott Laboratories.

Mr. GUARINI. Of all scholarship? They are given to people who is some way or form or other are connected with Abbott?

Mr. CHARLES BROWN. Have been or are currently connected with Abbott Laboratories, either currently or former employees, or dependents, as a condition of the will.

Mr. GUARINI. Just from the philosophical viewpoint, let me air this with you: These are moneys that are otherwise moneys that would go to the Treasury for paying estate taxes, when someone forms a foundation. So, therefore, all the public really has a vested interest in the good that a foundation does.

When they restrict it to employees, isn't this in a sense giving fringe benefits to those particular employees to the disinterest of the rest of the people that would like to apply for a grant from that foundation?

Mr. CHARLES BROWN. This was a bequest of Clara Abbott, and I am not the judge of what was right or wrong by her wishes.

Mr. GUARINI. I am not asking that. I am, just from the philosophical viewpoint, just my personal opinion—it seems to me that a foundation is in the public interest; not in the special interest.

When all these moneys are public moneys that would otherwise go into the coffers of our Treasury, when you restrict it to a good for the few, you have a situation where there are many paying for the scholarships of a few. I just question whether or not philosophically you think this is a way of getting around giving fringe benefits to employees?

Mr. CHARLES BROWN. I do not think philosophically it is a way of getting around giving fringe benefits to employees.

Mr. GUARINI. How long have you had this foundation; since 1945?

Mr. CHARLES BROWN. 1940.

Mr. GUARINI. 1940?

Mr. CHARLES BROWN. Yes.

Mr. GUARINI. And what percentage do you own of the stock of the company?

Mr. CHARLES BROWN. Less than 5 percent.

Mr. GUARINI. Less than 5 percent?

Mr. CHARLES BROWN. Yes.

Mr. GUARINI. So that originally what percent did you have?

Mr. CHARLES BROWN. I don't know what the outstanding shares were at the time of the bequest, but currently the ownership of the stock held by the foundation constitutes less than 5 percent of the outstanding shares of Abbott Laboratories. I don't know what the percentage was at the time of the bequest.

Mr. **GUARINI**. So that you probably did divest yourself of a considerable amount of stock.

Mr. **CHARLES BROWN**. There has been some divestiture over the years, but I do not know the answer to the question concerning 1940.

Mr. **GUARINI**. What percentage return do you earn on the portfolio?

Mr. **CHARLES BROWN**. The dividends amount to less than 2 percent.

Mr. **GUARINI**. Dividends?

Mr. **CHARLES BROWN**. The dividend——

Mr. **GUARINI**. Less than 2 percent?

Mr. **CHARLES BROWN**. Dividends paid by Abbott on the current market value of the stock are about 2 percent.

Mr. **GUARINI**. Very small then.

Mr. **CHARLES BROWN**. Very small.

Mr. **GUARINI**. Is that a public or private company?

Mr. **CHARLES BROWN**. It is a public company.

Mr. **GUARINI**. And what do you earn on your portfolio?

Mr. **CHARLES BROWN**. The Abbott Laboratories is a primary asset in ownership. Stock is the primary asset. There is some cash holding in the portfolio invested in short-term notes.

Mr. **GUARINI**. On the whole portfolio, what is your yield?

Mr. **CHARLES BROWN**. The total assets are $36 million to $38 million at the present time.

Mr. **GUARINI**. How much do you give out in charities and foundation monies each year?

Mr. **CHARLES BROWN**. We give approximately $1.4 million a year.

Mr. **GUARINI**. Which is about one-eighteenth, which is 5 percent, roughly speaking.

Mr. **CHARLES BROWN**. Yes.

Mr. **GUARINI**. What are your administrative costs?

Mr. **CHARLES BROWN**. We have one full-time employee and a couple part-time employees.

Mr. **GUARINI**. It is kept at a minimum?

Mr. **CHARLES BROWN**. Right.

Mr. **GUARINI**. Mr. Nolan, you have a real estate property question, and the question is how quickly the money should flow to the benefit of the charity through the foundation. You seek a 3-year rule instead of a shorter rule; is that correct?

Mr. **NOLAN**. Yes, sir. But only applicable to the real properties received by the foundation. Our proposal would simply delay the time in which the real property coming into the foundation is treated as going into a rather complex calculation in the code.

All cash contributions going into the foundation would still be required to be distibuted within the taxable year. We don't advocate delaying distribution in the way our foundation operates, and there would be no reason to do that the way we operate once the property can be reduced to cash. The problem is selling it.

Mr. **GUARINI**. Do you have in-common trustees or officers and directors?

Mr. NOLAN. None of the officers and instrumental people in the foundation are on the board of directors of either Mobil Corp., the parent company, or Mobil Oil Corp., the main subsidiary, if that is your question.

Mr. GUARINI. How large is your foundation?

Mr. NOLAN. In dollar amount, in 1982 they gave away $14 million.

Mr. GUARINI. What are the total assets?

Mr. PHILIP BROWN. There is no figure there.

Mr. GUARINI. Is it real estate?

Mr. PHILIP BROWN. I am Phil Brown, property manager. We are funded on a year-to-year basis. We take in properties every year and we have to sell them in the same taxable year to raise the money for funding the foundation. Last year, that amounted to $14 million.

One of the things that Mr. Nolan stated in his statement summary was that approximately 25 percent of the properties have to be rejected because I cannot sell them in that period of time on average. There are many properties, given the complexities of real estate, which don't lend themselves in that short time period to being sold, because we cannot presell.

I work full-time for the foundation. We receive the properties, have to put them on the market, and go through all the various things that you go to sell properties, and we——

Mr. GUARINI. And manage them for rents and profits; is that correct?

Mr. PHILIP BROWN. Pardon me?

Mr. GUARINI. You get rents and profits; you get that while you hold the real estate?

Mr. PHILIP BROWN. We have to sell it in that year to raise the cash for the foundation because of the passthrough requirement.

Mr. GUARINI. So you do that in order to get a lower tax on the charitable gift given to you?

Mr. NOLAN. That is true, yes.

Mr. PHILIP BROWN. That is absolutely true.

Mr. GUARINI. Where do your gifts come from?

Mr. PHILIP BROWN. From the operating divisions of Mobil. Those are properties surplus to various operating divisions throughout the United States in Mobil Oil.

Mr. GUARINI. This is to accommodate Mobil Oil's desire to take a better tax deduction for charitable donations; is that correct?

Mr. PHILIP BROWN. This is to accommodate——

Mr. GUARINI. I wonder how charitable Mobil Oil is or whether they are doing this for charity or whether or not they are just trying to maximize their tax deductions through benefits permitted in the Tax Code?

Mr. NOLAN. Let me try that one.

Mr. GUARINI. Mr. Nolan?

Mr. NOLAN. I think that could be said about any donor who takes an appreciated property of any kind and proposes to give it to charity. But if the donor is to bear a tax on that property, he is going to have less left over to contribute to charity. That is simply a matter of economics.

Mr. GUARINI. What kind of property is this, so I might be apprised?

Mr. NOLAN. Usually surplus to the needs of Mobil's business. This could be service stations——

Mr. GUARINI. It is also ground that has been explored as far as oil and minerals?

Mr. PHILIP BROWN. Most of it——

Mr. GUARINI. As far as oil and minerals?

Mr. PHILIP BROWN. No. Mr. Chairman, it involves almost everything you can possibly imagine. It is former service stations that have long ago passed through utilitarian good. In many cases, it is small acreages and large acreages that either have or have not ever been explored on. Somebody might have thought they had something and they decided after some years they did not have it. In rare instances, it is a very small office maybe which might be 1,000 square feet.

Mr. GUARINI. As a matter of curiosity, how does the value of the property compare when it is given to the foundation for tax purposes, as compared with the value of the sale of the property when it leaves the foundation?

Mr. PHILIP BROWN. Mr. Chairman, I receive from Mobil Oil Corp., or an affiliate—I receive an outside MAI appraisal which is required by me in the foundation, and I use that as the evaluating tool as to whether that is a fair market value for that property. I then take that property and expose it to the open marketplace.

Mr. GUARINI. You don't have any outside appraisers? You appraise it yourself?

Mr. PHILIP BROWN. No, no. We hire outside appraisers at all times. I never appraise a piece of property.

Mr. GUARINI. Then the property that is donated to the foundation has *x* value?

Mr. PHILIP BROWN. It has an appraised value, yes, sir.

Mr. GUARINI. When it is sold out of the foundation—you have to find a buyer in the marketplace—it has a different value which is *x* minus some factor; is that correct?

Mr. PHILIP BROWN. That is——

Mr. NOLAN. Let me answer.

Mr. GUARINI. I think he understands the question.

Can you answer?

Mr. PHILIP BROWN. It has a value. We expose the property above the appraised value.

Mr. GUARINI. You dispose of the property——

Mr. PHILIP BROWN. No; expose it to the marketplace above the appraised value at which we took it in.

Mr. GUARINI. What is your experience? Do you sell it for more or less than the value that you have originally apprised it for when you gave it to the foundation?

Mr. PHILIP BROWN. On average, we have sold, in high average, always above appraised values.

Mr. NOLAN. This has created some concern within Mobil Oil.

Mr. GUARINI. This is very surprising to me, because I never thought the oil companies were that much of an eleemosynary institution.

Mr. NOLAN. Mr. Brown tends to perform well in this regard and takes pride in this. Perhaps there are people in Mobil Oil who think the appraisals are too low. Nevertheless, it is done in this manner partly to meet the requirements of the code and because Mobil Foundation and Mr. Brown want to run it that way.

Mr. PHILIP BROWN. Mr. Chairman, I am careful of properties I take in so that I can sell them at over-market value. I reject many, many properties that the oil company offers to me.

Mr. GUARINI. Wouldn't it be better for Mobil Oil—taxwise better—to sell the property on the marketplace and get the money and give it to the foundation or give it to another charity where they would get the full benefit of the tax deduction instead of running it through this process of having a different part of the Tax Code apply to it?

Mr. PHILIP BROWN. We think that—we donated to over 5,000 charities last year across the United States. We felt that the giving program was a broad-brush program, approximately 54 percent of all that money going to educational programs. We felt this charitable giving program is best served by selling appreciated properties and that we can do the most good by doing so.

Mr. GUARINI. Do you show in your statement how much the property was valued at when it came to the foundation and how much it was valued at when it goes out of the foundation?

Mr. NOLAN. You refer to the prepared statement?

Mr. GUARINI. No; your annual statement that you make. Is there any reference in it at all, or is there any figure available?

Mr. NOLAN. Figures are available, yes.

Mr. GUARINI. They are?

Mr. PHILIP BROWN. I will supply them, if you wish.

Mr. GUARINI. Would you supply them for the last 3 years?

[The information follows:]

MOBIL FOUNDATION, INC.,
New York, N.Y., July 20, 1983.

Hon. FRANK J. GUARINI,
Subcommittee on Oversight, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR SIR: Following the testimony by J. Keith Nolan and myself in the hearings on private foundations on June 30, 1983, you as acting chairman, requested that Mobil Foundation submit data comparing (1) prices at which properties were sold by the Foundation and (2) outside appraised values at the time of donation by Mobil Oil Corporation to the Foundation.

Enclosed is all such data for the years 1980, 1981 and 1982. During these three years, 101 properties were sold by Mobil Foundation for total proceeds of $22,021,185, and such properties had aggregate appraised values of $18,965,193.

If you have any questions, please contact J. Keith Nolan or myself.

Sincerely,

PHILIP R. BROWN.

MOBIL FOUNDATION, INC.

Comparison of (1) independently appraised value of each property contributed by Mobil Oil Corporation with (2) actual sales price received on each property sold by Mobil Foundation during 1980, 1981 and 1982:

Property location	Appraised value at acquisition	Sale price received
PROPERTY SALES 1980		
Albany, N.Y.	$200,000	$200,000
Clearwater, Fla	95,000	150,000
Dallas, Tx. (N. Central Exp.)	102,000	165,000
El Reno, Okla	60,000	75,000
Fort Lauderdale, Fla. (North Federal Hwy.)	190,000	251,000
Fort Worth, Tex	43,000	65,000
Garden City, N.Y	68,500	66,000
Hammond, Ind	112,000	150,000
Madison, Wis. (W. Gorham)	135,000	140,000
Madison, Wis. (Regent St.)	44,000	46,000
Merrillville, Ind	192,000	285,000
Norfolk, Va	42,400	42,400
Oklahoma City, Okla. (McArthur)	73,920	91,500
Orange, Fla	98,000	115,000
Purcell, Okla	53,000	58,000
Santa Monica, Calif	250,000	599,000
Springfield, Pa	50,000	76,500
Vista, Calif	162,500	192,199
Woburn, Mass	70,000	85,000
MOBIL FOUNDATION PROPERTY SALES 1981		
Bakersfield, Calif	790,000	1,035,000
Barre, Vt	50,000	60,000
Brattleboro, Vt	125,000	205,550
Cornwells Hts, Pa	150,000	175,000
Covington, La	120,000	135,000
Dearborn, Mich. 3(ac)	118,000	94,500
Eggertsville, N.Y	66,700	80,000
Hammonton, N.J	50,000	56,250
Huntington, N.Y	50,500	83,149
Jacksonville, Fla. (E. Adams)	165,000	200,000
Jefferson Co, Tx	110,000	125,100
Los Angeles, Calif	2,190,000	2,200,000
Monroe, Mich	150,000	185,000
Oakmont, Pa	75,000	99,901
Orlando, Fla	300,000	320,000
Overland Park, Kans	147,750	127,500
Phoenix, Ariz	90,000	162,000
Pittsburgh, Pa. (Perry Hwy.)	72,000	80,000
Tampa, Fla	119,000	125,000
Van Nuys, Calif	98,000	152,500
MOBIL FOUNDATION PROPERTY SALES 1982		
Baker, La	78,000	90,000
Baton Rouge, La	81,250	90,000
Beaumont, Tex	85,000	100,000
Beaver, Pa	80,000	115,000
Bristol, Conn	65,000	55,000
Buffalo, N.Y	75,000	106,500
Chicago, Ill. (W. 63rd St.)	105,000	115,000
Chicago, Ill. (Peterson)	98,000	123,000
Colleton and Dorchester, S.C	69,000	69,000
Columbus, Ohio	214,000	214,000
Dallas, Tex. (Fitzhugh)	96,000	145,700
Dallas, Tex. (Forest Lane)	730,000	1,500,000
Dallas, Tex. (Duncanville Rd)	385,000	292,274
Dearborn, Mich., 3.37 ac	132,778	90 000
Edmond, Okla	52,500	65,000
Ft Lauderdale, Fla. (SW. 40th)	135,000	151,000
Harahan, La	122,000	157,500

Property location	Appraised value at acquisition	Sale price received
Houston, Tex. (Gulf Freeway)	$131,000	$140,000
Houston, Tex. (T.C. Jester)	134,000	160,000
Houston, Tex. (Chimney Rock)	196,500	240,000
Houston, Tex. (Long Point)	196,500	240,000
Houston, Tex. (Woodway)	1,850,000	2,000,000
Independence, Mo	107,500	150,000
Inglewood, Calif	105,000	160,000
Inwood, N.Y	1,765,000	1,550,000
Jacksonville, Fla. (San Marco)	220,000	225,000
Kansas City, Kans	110,000	110,000
La Mesa, Calif	351,000	515,000
Laurelton, N.Y	67,000	23,000
Leominster, Mass	70,000	77,500
Lincoln, Nebr	98,000	185,000
Little Rock, Ariz	104,000	125,000
Lynnwood, Wash	135,200	202,812
New Orleans, La	86,200	216,000
Niagara Falls, N.Y	84,600	100,000
Norman, Okla	100,000	200,000
Northampton, Mass	105,000	115,000
Ocala, Fla. (Lake Wear)	140,000	160,000
Ocala, Fla. (E. Silver Springs)	206,000	250,000
Oklahoma City, Okla. (Claussen)	75,000	112,500
Oklahoma City, Okla. (SW, 47th)	80,000	85,000
Oklahoma City, Okla. (Meridan)	135,000	150,000
Oklahoma City, Okla. (N. May)	82,200	178,000
Omaha, Nebr	106,000	106,000
Orange, Tex	95,000	95,000
Pasadena, Tex	183,500	246,000
Phoenix, Ariz	115,000	135,000
Pittsburgh, Pa, (Perryville)	60,000	82,000
Portland, Maine	95,400	108,000
Raytown, Mo	77,000	50,000
Revere, Mass	100,000	135,000
Rumson, NJ	60,000	90,250
Southfield, Mich	77,500	90,000
Southgate, Calif	190,000	210,000
Springfield, Mass	86,000	106,100
Tacoma, Wash	175,000	235,000
Tenn. Properties	714,000	155,000
Topeka, Kans	154,000	155,000
Watertown, NY	65,000	65,000
Wichita, Kans. (S. Meridan)	53,000	75,000
Wichita, Kans. (Central)	115,000	175,000
Willoughby, Ohio	40,000	60,000
Grand total for 101 locations for 1980, 1981 and 1982	18,965,193	22,021,185
Excess		3,055,992

Mr. GUARINI. I would want to commend Mobil Oil for that, if you do that.

Mr. PHILIP BROWN. Yes, sir.

Mr. GUARINI. Thank you very much. We appreciate your testimony. Your statements will be in the record.

The hearings will be adjourned subject to the call of the Chair.

Thank you, gentlemen, very much.

[Whereupon, at 4:45 p.m., the hearings were adjourned.]

[The following was submitted for the record:]

ACTORS THEATRE OF ST. PAUL,
St. Paul, Minn., June 15, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I write as volunteer President of the Board of Directors of Actors Theatre of St. Paul, a professional nonprofit organization serving the Twin Cities community. I write to apprise you of the fine artistic endeavors of this theatre and the generous foundation community that has sensitively underwritten our program for thousands of citizens from all economic stratas. Three local foundations have responded to unique concerns which could not have otherwise been met.

The Dayton Hudson Foundation, whose generous operating support enables us to produce high quality programming with local professional artists, has twice made additional special emergency grants to the Theatre. The first grant was in response to a devastating cut in state funding and the second was in response to a serious cash flow situation. Without their generous assistance and immediate response, we would have jeopardized our programs and seriously affected our ability to sustain and nurture an acting company who have become an important artistic resource to our community.

The Medtronic Foundation has repeatedly funded a program for senior citizen ticket subsidy, allowing us to offer a $3.50 to $5.00 price to seniors attending our productions. They have responded to a sizeable portion of our audience who find live theatre presentations a significant part of their daily experience.

The Northwest Area Foundation has funded special artistic projects enabling our company to take artistic risks, collaborating with artists from other disciplines. Support for these special projects provides "research and development" time which is critical to advancing our art form.

The size of grants and purpose of funding could not have been secured through other sources. I have found the foundation community here in the Twin Cities responsive, sensitive, and enlightened to our needs and the needs of the community as a whole. They often form partnerships with other sectors which significantly impact the quality of work of our nonprofit organizations. Indeed, sometimes they stimulate and lead other funding sources to support worthy causes. I can speak for my 35 member Board and over 35,000 audience members whose collective experience is greatly enriched by Actors Theatre. I can also assure you that without the support of over 35 local foundations, our theatre would not exist today.

I gratefully request that you make this letter an official part of the hearing record for the Oversight Subcommittee of the House Ways and Means Committee.

Sincerely,

GEORGE S. HAGE, *President.*

ALBERT EINSTEIN COLLEGE OF MEDICINE
OF YESHIVA UNIVERSITY,
Bronx, N.Y., June 13, 1983.

Mr. JOHN SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing in support of the legislation introduced in the House of Representatives dealing with non-profit foundations (H.R. 3043). This issue is particularly relevant to me because I have been conducting a research project to achieve greater cost-effectiveness of alcoholism treatment for the past year under foundation support. Since that time I have been able to study the outcome of an innovative treatment program for which evaluation funding has not been available through federal, state, or local agencies. In many ways, this support reflects efforts to respond to recent federal budget cuts, as well as to support non-traditional and newly emerging programs. Since the project is carried out at the Bronx Municipal Hospital Center, it reflects the collaboration between foundation support and city and state agencies, as well as a university-based psychiatric training program which itself operates with federal grant support.

Thank you very much for your concern. Could you please make this letter an official part of the hearings record on this piece of legislation.

Sincerely yours,

MARC GALANTER, M.D., *Associate Professor.*

American Association of Homes for the Aging,
Washington, D.C., June 21, 1983.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: This letter is intended to provide information to the Committee on Ways and Means which in holding hearings on H.R. 3043 regarding foundation support, its value to our organization and our member nonprofit homes for the aging.

The American Association of Homes for the Aging was founded with the support of two Ford Foundation grants totalling $260,000 and received over a six year period from 1961 to 1967. Without this funding, the Association, which now represents over 2,000 nonprofit homes for the aging with nearly 400,000 elderly residents and 1 million elderly served by our member organizations' outreach programs, this group would not have emerged to participate effectively in the structuring of the Medicaid and Medicare programs developed during the late 1960's. It required vision and risk for a foundation such as the Ford Foundation to assist in building a coalition of nonprofit, religious and fraternal sponsors of services for the elderly at a time when aging issues were not in vogue.

A more recent example of foundation support of innovations which would not otherwise emerge is a $24,000 grant from The Commonwealth Fund to publish a directory of continuing care retirement communities through the joint effort of AAHA and the 14 million member American Association of Retired Persons. The resources used to spur the development of this much needed public information source in such a way that it will become self supporting and continue to be a public service, is a prime example of the service foundations such as The Commonwealth Fund provides to the American public.

Among homes for the aging, both local and national foundations have provided development funds and continuing operating funds for new programs which meet the elderly population needs in areas such as respite care, adult day care, senior citizen centers, hospice care, volunteer services, and emergency telephone systems. A recent $5 million grant program sponsored by the Robert Wood Johnson Foundation for the development of interfaith coalitions to meet the needs of the elderly living in their communities is another example of foundation support which is uniquely meeting a need in an area unlikely to receive federal or individual contribution support.

In short, the American Association of Homes for the Aging was begun and nurtured by foundation support. Member homes of the association are able to provide a wider range of much needed services because of innovative and continuing foundation support. For these reasons, we are in favor of H.R. 3403 and recommend its favorable review by the Committee.

Sincerely,

Sheldon Goldberg,
Executive Vice President.
Charles H. Edwards,
General Counsel and Director of Government Affairs.

Statement of the American Association of Museums

Mr. Chairman, the American Association of Museums is pleased to have the opportunity to submit a statement for the record. We strongly support H.R. 2183 and H.R. 3043 because each bill makes changes in the private foundation tax rules that will enable museums to expand their services and more effectively fulfill the purposes for which they received tax-exempt status.

Under present law, a museum which does not satisfy one of the tests for public charity status under section 170 of the Internal Revenue Code is presumed to be a private foundation. Section 170 classifies certain institutions as public charities based upon their function as a religious organization, educational institution or hospital. Each other type of charitable organization is deemed to be a public charity only if a substantial part of its financial support is from "public" sources.

Most museums that fail to satisfy either the functional test or the public support test are classified as private operating foundations and are subject to a set of requirements not imposed on public charities. These requirements include additional recordkeeping for donors as well as recipients (the "expenditure responsibility" requirement) and a two percent excise tax.

The private operating foundation rules afffect a variety of museums ranging from large institutions with nationally recognized collections to small museums with specialized collections. Many museums typically began their operations with a substantial contribution from a single source. This contribution is causing such musems to fail to meet the public support test and to be classified as private operating foundations rather than as public charities. For example, a museum that has had the good fortune to be the beneficiary of a successful endowment may be classified as a private operating foundation because it is the beneficiary of a trust with substantial income which reduces the relative support of other donors.

To avoid private foundation status, museums will be forced to seek public support from other sources thereby reducing the amount of charitable donations available to other worthy—and less financially secure—institutions. Thus, maldistribution of donations is encouraged at a time when the available amount of contributions is shrinking.

Mr. Chairman, H.R. 2183 will remove certain museums from the private foundation rules so long as they satisfy certain standards that guard against the abuses that gave rise to those rules. H.R. 2183 will provide that museums which satisfy strict standards designed to assure public involvement and accountability—like the standards applicable to churches, schools and hospitals—be excluded from the private foundation rules. These standards include the following:

(1) The museum must be a permanent institution which is exempt from tax under IRC Section 501(c)(3);

(2) At least twenty-five percent of the governing body of the museum must consist of community leaders and/or local public officials;

(3) The museum must employ a professional staff and own, possess and care for tangible objects; and

(4) The museum must conduct regular exhibits which are open to the public.

Public charity status should not depend solely on sources of financial support. Equally important are the degree of public access to the tax exempt organization, the nature of the function performed by the organization, and the extent of public participation in the operation of the organization. Congress's intent in enacting the private foundation legislation in 1969 was to apply the new rules to personal charitable funds and to exempt cultural institutions serving the public at large. Many museums meet the criteria for public operations and service listed above and should, in keeping with the spirit of the private foundation legislation, be classified as public charities. We urge the subcommittee to act favorably on H.R. 2183.

H.R. 3043 also makes an important change in the current private foundation rules that will have an effect on the many museums that receive assistance from foundations. Under current law, the income tax deduction rules for gifts to private foundations are less favorable than those for gifts to other charities. This disparity in treatment has contributed to a reduction in giving to foundations which, in turn, reduces the financial support for museums. We urge the subcommittee to act favorably on H.R. 3043. The purpose for this disparate treatment—concern that foundations do not make adequate distributions—is no longer applicable and museums and other foundation beneficiaries should not be made to suffer unnecessarily.

STATEMENT OF ARIZONA PUBLIC SERVICE CO.

Arizona Public Service Company (APS) is an investor-owned utility, engaged principally in providing electricity and natural gas in the State of Arizona. The company's services reach approximately 70% of the state's population including all or part of twelve of Arizona's fifteen counties. APS presents this statement to the House Committee on Ways and Means in opposition to H.R. 1635, Industrial Development Bond Limitation Act of 1983.

As a result of previously enacted federal and state legislation, utility companies which operate coal-fired generating plants have been required to comply with strict air quality standards. These requirements are being met by adding facilities to abate, reduce or prevent pollution caused by the operation of the coal-fired plants. The added facilities, which may include scrubbers, electrostatic precipitators, and baghouses, have been financed through the use of pollution control bonds, issued through a municipality or other governmental agency authorized to issue tax-exempt pollution control bonds.

For utilities with large construction programs, such as APS, the ability to issue pollution control bonds is necessary in view of the large amount of capital which must be raised to support an on-going construction program. By issuing pollution control bonds, APS is able to issue debt at lower cost and reduce interest expense, which in turn reduces our customers' rates.

The effect of H.R. 1635 is to increase the cost of pollution control financing by changing the method by which a project, which is financed with pollution control bonds, can be depreciated for tax purposes. The current Accelerated Cost Recovery System (ACRS) permits the write-off, for tax purposes, of fifteen-year property in accordance with the following schedule:

Year	Percent of depreciation	Year	Percent of depreciation	Year	Percent of depreciation
1	5	6	7	11	6
2	10	7	7	12	6
3	9	8	6	13	6
4	8	9	6	14	6
5	8	10	6	15	6

H.R. 1635, however, proposes that not only should the time period for recovery be extended to twenty-two years, but also that depreciation should be taken on a "straight line" or level basis over that time period. Tax depreciation under H.R. 1635 would conform to the following schedule:

Year:	*Percent of depreciation*
1	4.55
Through 22	

The net effect of the proposed legislation is that utilities, such as APS, would be forced to pay additional state and federal taxes.

Utilities with large construction programs typically face cash-flow difficulties, and increasing their tax liability only makes this situation worse. APS, for example, would be forced to pay an additional $10 million in state and federal income taxes from 1985 through 1999 (for the first fifteen years of operation of a facility financed with tax-exempt bonds). Therefore, no change in the current depreciation schedule should be applicable to facilities financed with pollution control bonds.

Another provision of H.R. 1635 which needs modification is the effective date for the proposed legislation. The bill states that is provisions would apply to facilities that are completed after the effective date of the proposed legislation. However, the bill does not address the ability to refund outstanding pollution control bonds at maturity with additional pollution control securities.

For example, APS, in compliance with the Clean Air Act, is constructing a sulfur dioxide removal project at its Four Corners Power Plant at a cost of $60,250,000, which is financed with pollution-control bonds. The facility is scheduled for completion in late 1984 with the bonds maturing in February 1985. At that time, the company plans to refund the maturing bonds with permanent pollution control bonds. However, the proposed legislation does not specifically state that utilities would be able to obtain pollution control financing on such maturing obligations. We strongly believe that the bill should be revised to grandfather, and therefore explicitly permit, the refunding of short-term pollution control bonds which are outstanding.

In our case, if the bonds mentioned above, which mature in 1985, cannot be refunded with additional pollution control securities, the cost of financing the Four Corners S02 removal project would be significantly higher. The increased financing costs would in turn be passed on to our customers through higher rates.

We conclude that for the reasons cited above, H.R. 1635 would be detrimental to both the utility industry and its customers. Utility customers must already bear the additional cost of pollution control facilities. The effect of H.R. 1635 would be to increase the already heavy burden on consumers of electricity, and, therefore, should be opposed.

ASSOCIATION OF AMERICAN MEDICAL COLLEGES,
Washington, D.C., June 13, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing to support H.R. 3043, a bill to increase the tax incentives for gifts to foundations and to clarify and simplify regulations now imposed on foundations.

As the Director of the Department of Academic Affairs for the Association of American Medical Colleges, my major responsibility is to improve medical education in this country. During the past 25 years I have been involved in academic medicine, first, at the University of Washington in Seattle and, since 1971, at the AAMC in Washington. My experience is that support from private independent foundations has been vital to the development and implementation of programs that have had major effects upon medical education. The following are three examples.

1. In 1970, a $900,000 grant from the Commonwealth Fund permitted the faculty at the University of Washington to initiate the WAMI (Washington-Alaska-Montana-Idaho) Program. This successful educational experiment to build upon the strengths of the University of Washington to provide medical education opportunities throughout that four state region could not have been started without the support of the Commonwealth Fund. Subsequent to funding by Commonwealth, additional funds were provided first by the federal government and now the program is totally supported by the four states.

2. In 1977, three foundations provided a total of $250,000 to the AAMC for a major project to improve graduate medical education. This funding by a consortium of the Henry J. Kaiser Family Foundation, the Kellogg Foundation, and the Education Foundation of America resulted in a three year program to improve the quality of graduate medical education in the United States. As a result, significant changes were made in the program for accreditation of residency programs and their incorporation into an academic institutional framework.

3. In 1981, the Henry J. Kaiser Family Foundation granted nearly $700,000 to the AAMC for a major project on the General Professional Education of the Physician and College Preparation for Medicine. While this project is still in progress, it has already excited a great deal of interest and attention among faculties and the public at large (see enclosed article from Time magazine).

In each instance the freedom of foundations to support innovative ideas and unusual opportunities proved to be the essential stimulus for development and implementation of programs. Increasing the strength and opportunities for foundations in the United States to support advancements in the public interest is very important.

Sincerely yours,

AUGUST G. SWANSON, M.D.,
Director, Department of Academic Affairs.

Enclosure.

[From Time Magazine, May 23, 1983]

MED SCHOOL, HEAL THYSELF—NEW STUDIES PRESCRIBE BETTER WAYS OF TRAINING DOCTORS

(By Claudia Wallis)

On your mark! High school is the easy part. Just be sure of getting A's in science and good SAT scores, and maybe do some volunteer work in a hospital (it looks nice on your record). Get set! The pressure is on in college. Nothing less than an A will do for all pre-med courses. Choose a major in one of the sciences and fill out the rest of the schedule with "Mickey Mouse" subjects, lest your cumulative average slip below A-minus. Go! You are in. At med school you will spend 30 to 40 hours a week lectures, and as many more studying. But do not plan on actually grasping the material; there is no time to do more than memorize for examples. And do not plan on getting much sleep—for at least the next seven years.

For those seeking an M.D. these days, the race begins early, the course is arduous, and the prize, once achieved, may hardly seem worth the effort. Medical students grumble about the unceasing pressures, the torrents of material, the lack of time to think, much less relax. And they are not the only ones complaining. Patients gripe that the products of this regimen, the current crop of doctors, have no compassion, run their practices like assembly lines and are more fascinated by tests and procedures than by the human beings they treat. Medical school deans and faculty members, meanwhile, worry about turning out narrow-minded, unenthusiastic graduates who have little perspective on the facts they have swallowed. After conducting a survey at Stanford, Medical Professor Saul Rosenberg concluded that medical students are widely perceived as "aggressive, competitive, narrow, dishonest, unfriendly individuals, in other words, nerds."

"Medical education is not in optimum health," declares Dr. Daniel Tosteson, dean of Harvard Medical School. What is worse, he adds, is that "there is little agreement on the diagnosis and treatment." Indeed, virtually every med school dean in the country has his own prescriptions for fixing what is wrong. Last week, for instance, prestigious Johns Hopkins School of Medicine announced a plan to guarantee admission to students still in their junior year of college. The purpose, said Hopkins Dean Richard Ross, is to encourage students to take a broader and more flexible approach to their senior year. Said he: "We would like to reverse the trend toward early specialization and overemphasis on science as preparation for medicine."

To bring some focus to the problems and encourage reform on a national scale, the Association of American Medical Colleges, which represents all 127 medical schools in the U.S. and all 16 in Canada, is conducting a three-year, $1 million survey, the first sweeping examination of medical education in a half-century. The aim, says A.A.M.C. President John Cooper, is to determine "what is the education that all physicians need," and how to make the process less "brutal."

The panel has already discovered that students and faculty members around the U.S. agree on at least one point: there is simply too much for young doctors to learn. Medical school has always been demanding, but because of the tremendous explosion of knowledge since World War II, the curriculum is now bursting at the seams. "Memorization, that's what it's all about," says David Earle, 24, a medical student at the University of California, San Francisco. Students are now inundated with factual details, a process some panel members characterize as "densepack education."

In his new book, "The Youngest Science: Notes of a Medicine-Watcher," Dr. Lewis Thomas, who is chancellor of Memorial Sloan-Kettering Cancer Center in New York City, comments on the changes that occurred as medicine went from "a profoundly ignorant profession" to "a techology based on science." Students today are so overwhelmed by information that "many get turned off by basic science, instead of being flabbergasted by how wonderful it is," said Thomas in an interview with TIME. He goes so far as to suggest that the curriculum for the first two years should be "cut in half."

Ironically, much of the information pushed on medical students will be of limited use when they become practitioners. "Eighty percent of what I learn won't be relevant in 30 years," says Lachlan Forrow, 27, a fourth-year medical student at Harvard. According to Dean Donald Tapley of Columbia's College of Physicians and Surgeons, "biochemistry and molecular genetics are moving so fast that students graduating this year are not up to date because they learned it three years ago."

The pace of scientific discovery is so rapid that there is no point in trying to teach every last fact, says A.A.M.C. Panel Chairman Steven Muller, who is president of both Johns Hopkins University and its hospital. Instead, Muller and many of his peers want to pare down the curriculum so that studnets can concentrate on the fundamentals of medical science and practice. At the same time, they argue, students must be taught how to stay abreast of their evolving profession. Says August Swanson, director of academic affairs at the A.A.M.C. "We have to teach our students to be lifelong learners and give them the conceptual knowledge and study skills that will allow them to keep up."

The A.A.M.C. panel will not make its recommendations until November 1984. In the meantime, medical schools are already experimenting with a number of innovations. Ohio State and the University of Illinois have poineered in the use of computers to train doctors. With the quantity of medical literature expanding a hundredfold in a decade, the computer is probably the only tool that can allow doctors to stay up to date. Tufts School of Medicine plans to break ground this year for a $23 million health-sciences education building. Funded largely by the Federal Government, it is designed to be a national prototype for "lifetime medical education," says Carl Edwards, chief consultant on the project.

Elsewhere, universities are taking steps to cut the work load and make classes more interesting. At Washington University School of Medicine in St. Louis, the amount of time that students spend in the classroom has been reduced by 15%, and more outside exercises and research projects have been introduced instead. At Northwestern, faculty members have been experimenting with more imaginative teaching techniques. Professor James Garvin, for instance, now spikes his biochemistry lectures with a "case of the week," such as scurvy or nerve-gas poisoning, to make the subject seem less dry and abstract.

Other universities are attempting to reduce the pressures on students by spreading medical education over more than four years. The University of Missouri accepts applicants right out of high school for enrollment in a special eight-year program that integrates medical courses with undergraduate work. Boston University has a similar program that begins in the junior year of college. Another way of unpacking the curriculum would be to extend some of the course work into the three to six years that most doctors spend in residency programs. "Now that postgraduate training has become practically obligatory, there is no longer the urgency to teach everything in the first four years," says Dr. Thomas Meikle, dean of Cornell Medical College. Meikle prefers this approach to admitting students before they have finished college. Says he: "Nothing can replace four solid years of the liberal arts."

Unfortunately, very few medical students are so broadly educated. Far too many who start out with wide interests become narrowly focused in their fight to get into med school. Students blame the problem on admissions committees, which emphasize grades and test scores over the personal attributes and interests that may make an individual a superior doctor. Notes Utah University Psychologist Calvin Taylor. "Based on test scores, you cannot predict who is going to be the most knowledgeable physician ten years later." Perhaps, says Thomas, "there should be an admissions quota for the solid citizens who rank in the middle of their class."

Whether med schools can actually foster sympathy and compassion in students is a matter of debate, but a number of educators feel that it is at least worth trying. At Brown, students "practice" medicine with professional actors who play patients. The scenes are videotaped, and students review them later to learn how to communicate better with those they treat. Columbia has taken a more academic approach by establishing the Center for the Study of Society and Medicine, which, says Dean Tapley, will offer instruction on "how to deal with the patient, the patient's family and his whole life, rather than 'the third bed on the left with a coronary.' "

Certainly the best way to humanize doctors is to humanize their training. The common aim of all efforts to reform medical education is to allow students more time to absorb and reflect upon what they learn and more freedom to pursue personal interests. Says Dean John Sandson of Boston University: "If we want our students to be compassionate, we as faculty and administrators have to be compassionate too."

THE ASSOCIATION OF JUNIOR LEAGUES, INC.,
New York, N.Y., June 16, 1983.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing to you on behalf of the Association of Junior Leagues to express our support for the important role foundations play in American society. We would request that these remarks be made an official part of the hearing record.

The Association of Junior Leagues is an international not-for-profit voluntary women's organization with 252 member leagues representing 152,000 women throughout the United States, Canada, and Mexico. Junior Leagues promote the solution of community problems through voluntary citizen involvement, and train their members to be effective voluntary participants in their communities. While the internal operations of the Association are supported entirely by the membership, foundation funding has been a critical catalyst in enabling the Association to develop innovative programs designed to improve the quality and capacity of voluntarism in many sectors of society. Some examples of Association programs funded by foundations are:

Volunteer Career Development (VCD)— a self-assessment process designed to help League members to identify their interests and abilities in terms of their volunteer experience. Foundation funding enabled VCD trained League members to teach school-age youth to use volunteer activities as a tool for future career planning. Funded by the W. K. Kellogg Foundation.

Volunteers Intervening for Equity (V.I.E.)—a program advocating for the vital role of the older adult as a volunteer; a program which not only augmented the numbers of volunteers available to community programs, but one which also helped focus attention on the important role older persons could and wanted to play in society. Funded by the Edna McConnell Clark Foundation.

Project LEAD—a project in collaboration with the Quest National Center in which Junior League members work with young people to develop teams of trained youth with the leadership skills necessary to make a positive and active commitment to their communities. Funded by the W. K. Kellogg Foundation.

Voluntarism and Social Work Practice—a project which explored how the role of volunteers might be expanded in social work agencies and how social workers might be trained to better utilize the skilled volunteer in delivering services. Funded by the Lois and Samuel Silberman Fund.

These projects speak not only to the vital role volunteers play in providing direct services, but also to the role of volunteers as effective advocates.

Further, in 1982 the Association co-sponsored, with the Johnson Foundation of Racine, Wisconsin, and the Foundation for Child Development, a conference entitled "Child Care: Options for the 80's". Bringing together League members and child care experts, the conference participants developed an agenda and strategies for action which will enable Junior Leagues to advocate effectively for child care services in their communities.

And, finally, the Foundation for Child Development is helping the Association to strengthen the Junior Leagues' public policy activities so that League members will be better able to function as informed and effective spokespersons for the allocation of resources and the provision of services at the state and local levels.

Taken together, these Association activities point to the vital role foundations play in enabling communities and organizations to help themselves. Through the granting of developmental seed money, matching funds and in-kind goods and services, foundations have enhanced the Association's ability to effectively demonstrate the essential role of volunteers in our society and to enable them to enhance the quality of life in their communities.

Sincerely,

ANNE B. HOOVER, *President.*

SUMMARY STATEMENT OF POSITION OF ATLANTA LIFE INSURANCE CO. AND HERNDON FOUNDATION, BY KENNETH H. LILES, COUNSEL

Congress has recognized that the Herndon Foundation's holdings of stock in the Atlanta Life Insurance Company ("Atlanta Life") are entitled to unique treatment under the private foundation provisions of Chapter 42 of the Internal Revenue Code. Congress passed special legislation on two separate occasions, first in the Tax Reform Act of 1969 to permit, and subsequently in 1974 to assure, that the Herndon Foundation could retain permanent control of Atlanta Life without violating the proscriptions of section 4943 relating to excess business holdings. Congress thereby sought to assure continuity of control, through the Foundation, of Atlanta Life by local black business leadership for the continued benefit of the black community, thus preserving vital jobs and necessary financial resources for the black people of the Atlanta area and the Southeast region. The Treasury Department and the Office of Management and Budget supported passage of the 1974 special legislation in a favorable report to the Chairman of the House Ways and Means Committee.

At the time of passage of the Tax Reform Act of 1969, the Foundation owned directly over 20 percent of the stock (outstanding) of Atlanta Life, which was the Foundation's only asset other than a nominal amount of cash, and the creator of the Foundation (Mr. Norris B. Herndon, then President of Atlanta Life) held practically all of the remaining stock, i.e., over 71 percent, which, under the terms of his existing Will and a revocable trust (the "Herndon Trust") were to go to the Foundation on his death. In its version of the bill that became the Tax Reform Act of 1969, the Senate Finance Committee adopted, and the Senate later approved, a special provision designed to make the stock divestiture requirements of section 4943 inapplicable to the Herndon Foundation's then existing holdings in Atlanta Life (so-called "present holdings"), considering for this purpose the shares in the Herndon Trust as though already held by the Foundation (see Senate Rep. 91-552, 91st Cong. 1st Sess., at p. 44; 1969-3 C.B. 423, 453). However, in Conference with the House, the Herndon Foundation's special provision was changed to its present form, i.e., to provide a specific exception permitting retention of 51 percent of the "present holdings" of the Herndon Foundation in Atlanta Life. No explanation or reason for this change was provided in the conference report on the bill. (See 1969-3 C.B. 644, 647-648). Likewise, the General Explanation of the Tax Reform Act of 1969, prepared by the Staff of the Joint Committee on Internal Revenue Taxation (the so-called "Blue Book") merely details the specific requirements of the Herndon Foundation amendment without further explanation (see Blue Book on Tax Reform Act of 1969, at pp. 45-46).

The Conference Committee's change in the language of this special provision appears to have been made because the Conferees could not be assured as to how much of the stock which was to pass to the Foundation under Mr. Herndon's Will or the Herndon Trust, both of which were revocable, would actually be received by the Foundation; and, since only 51 percent ownership of Atlanta Life would be necessary to assure continuity of control by the Foundation of Atlanta Life, the drafters of the amendment opted to express the exemption in the latter form.

Mr. Herndon died in 1977. As it turned out, after the payment of taxes and expenses of his estate and the satisfaction of some minor bequests to specific persons, most of his stock in Atlanta Life passed to the Foundation under his Will and the Herndon Trust. After completion of the administration of Mr. Herndon's estate on July 28, 1981, the Foundation ended up with, and now holds, almost 73 percent of the shares of Atlanta Life and the Foundation's disqualified persons (trustees and their family members) (its "DP group") own over 10 percent, or a total of almost 84 percent held by this combined group.

Until Mr. Herndon died and the administration of his estate had been finally completed, however, the Foundation had no way of knowing how many shares of Atlanta Life stock it would eventually receive and be able to retain. Accordingly, until then, it was inappropriate for the Foundation's trustees to undertake to dispose of any potential excess holdings of Atlanta Life shares. Nevertheless, the Foundation is now required by section 4943 to dispose of, by May 26, 1984, most of its actual 1969 holdings, i.e., about 18 percent of Atlanta Life's stock, and the Foundation will be required to make additional divestitures thereafter to reduce the combined holdings which it and its DP group hold in Atlanta Life to the 51 percent permitted by its special legislation.

There does not appear to be any feasible way, considering the unfavorable current market conditions, for the Foundation to dispose of its excess shares of Atlanta Life stock, at least in the time frame presently prescribed by section 4943, without doing serious damage to Atlanta Life and the Foundation. A redemption of the Foundation's excess holdings, even if permissible under the pertinent state insurance regulations, would not be feasible because of the high percentage of holdings that would have to be redeemed, thus wasting vital Atlanta Life surplus. There is no public market in Atlanta Life shares, and there is very little prospect in the present economic environment of finding a purchaser willing to pay true value for what would be a minority interest in Atlanta Life. A gift of the shares to a particular public charity would severely restrict the Foundation's ability to continue to carry on its own important charitable activities, and thus would be counterproductive.

The funds available for the Foundation's charitable work come principally from dividends on its substantial holdings of Atlanta Life stock. In addition to providing significant support for the black colleges in the Atlanta University group and black churches in the downtown Atlanta area, the Foundation has utilized a substantial portion of its available funds to restore Mr. Herndon's ancestral home and to maintain and operate it as an historical site and museum, as an inspiration for the black community. The Foundation needs the dividends from its present holdings of Atlanta Life shares to continue to maintain and operate the Herndon home and to continue the Foundation's present level of support to the black institutions in the Atlanta area it has traditionally supported. Thus, a transfer of the stock without adequate consideration would be self-defeating.

Considering the Congressional purpose for the special legislation for the Herndon Foundation, subsequent events have demonstrated that Congress should exempt from section 4943 all of the Herndon Foundation's "present holdings" in Atlanta Life, instead of permitting the Foundation and its DP group to retain only 51 percent control of Atlanta Life. Once it was agreed that the Foundation should be permitted to hold majority control of Atlanta Life in perpetuity, there was no real reason why it should not have been permitted to retain whatever additional shares it also was intended to receive upon Mr. Herndon's death under his existing Will and the Herndon Trust.

The IRS has favorably ruled that all of the stock held by the Foundation in 1969 and later received by it under Mr. Herndon's Will and the Herndon Trust qualifies as so-called "present holdings." There are good reasons why the Foundation should be permitted to continue to retain all of its "present holdings" in Atlanta Life. Under the present circumstances, the required divestiture of the "present holdings" above the permitted 51 percent would only serve to reduce the effectiveness of the Foundation and Atlanta Life to continue as viable forces for the good of the black community, which they both so effectively serve. Thus, the very objective that the special Herndon Foundation legislation was designed to effectuate would be in danger of being undermined, unless section 4943 is further amended to permit the Foundation to continue to hold all of its "present holdings" in Atlanta Life.

Accordingly, the Foundation should not be required to dispose of any of the shares it held in Atlanta Life when the Tax Recovery Act of 1969 was enacted or those which it expected to, and later did, acquire under the pre-1969 Will and Trust from its founder, Mr. Norris B. Herndon, i.e., all of its so-called "present holdings" under section 4943. The easiest way to accomplish this result would be to amend section 101(1)(4) of the Tax Recovery Act of 1969 to substitute as permitted "present holdings" "84 percent" for the existing "51 percent."

As an alternative, due to the shortness of time left for action before May 26, 1984, Congress may wish to extend the divestiture periods presently provided under IRC section 4943(c)(4)(B) (ii) & (iii), and (c) (5) and (6) for a reasonable period (up to five years) to provide itself, the Treasury Department and the Congressional staffs, sufficient time within which to study and enact permanent solutions to this and the other serious problems raised by section 4943.

A detailed background memorandum fully explaining the Atlanta Life situation is attached for your review.

Background Memorandum on the Atlanta Life Insurance Co., and the Alonzo F. and Norris B. Herndon Foundation

It is the position of the Atlanta Life Insurance Company ("Atlanta Life") and of the Herndon Foundation ("Foundation") that it is very questionable whether the divestiture provisions of section 4943 of the Internal Revenue Code should be made applicable at all to any of the Foundation's "present holdings" of Atlanta Life stock. At the very least, considerable additional time should be granted beyond what is presently provided under the divestiture provisions of section 4943 for the Foundation to dispose of its excess business holdings in Atlanta Life.

Present application of the divestiture provisions of section 4943 would appear to be contrary to the Congressional intent and would likely frustrate the Congressional purpose that led to the enactment (for the express benefit of Atlanta Life and the Foundation) of section 101(1)(4) of the Tax Reform Act of 1969, which permitted the Foundation to retain permanent control of Atlanta Life, and later enactment of section 101(1)(3)(F) of the Tax Reform Act of 1969, which was designed to assure that the Herndon Foundation would be able to retain control of Atlanta Life. In order to fully understand this unusual situation, a description of the Foundation's unique relationship with Atlanta Life and the legislative history of sections 101(1)(4) and 101(1)(3)(F) of the Tax Reform Act of 1969 are necessary.

In formulating the provisions of the 1969 Act governing the divestiture of excess business holdings under section 4943, Congress gave special consideration to the unique circumstances of the Herndon Foundation of Atlanta, Ga. The Foundation was chartered on November 22, 1950, and received its tax exemption letter from the Internal Revenue Service on December 18, 1952. The only asset of the Foundation, other than a nominal amount of cash, was stock in the Atlanta Life Insurance Company. As of May 26, 1969, the Foundation held 12,457 shares, or 20.9 percent of the total outstanding shares of Atlanta Life. The creator of the Foundation, Norris B. Herndon, owned 42,707.86 shares, representing 71.5 percent, which shares were to go to the Foundation under his will and had been placed in a revocable trust (hereinafter "Herndon Trust") for the intended benefit of the Foundation. Subsequently, upon Mr. Herndon's death in 1977, the Herndon Foundation became entitled, under the terms of Mr. Herndon's will, and the revocable trusts previously established by him, to receive all of Mr. Herndon's stock in Atlanta Life after the payment of taxes and expenses of his estate and the satisfaction of bequests to specific persons totalling only 1,825 shares. After completion of the administration of Mr. Herndon's estate on July 28, 1981, the Foundation now holds 39,847.86 shares or 72.7853 percent of the shares outstanding of Atlanta Life and disqualified persons as to the Foundation (trustees and their family members) (herein, its "DP group") hold another 5,776.85 shares or 10.5519 percent, i.e., a total of 83.3372 percent of Atlanta Life's total outstanding shares of stock (54,747) are presently held by the Foundation and its controlling trustees.

At the time of enactment of the Tax Reform Act of 1969, Congress recognized that the Atlanta Life Insurance Company was a unique example of black capitalism, having been founded in 1905 by a former slave, Alonzo F. Herndon, and further developed by his son, Norris B. Herndon. The Atlanta Life stock had always been closely held. There was no present market for this stock. If a sale of the stock or a merger with a larger company had been necessary to comply with the private foundation provisions of the 1969 Act, control of Atlanta Life very likely would have passed out of the Atlanta black community. Substantial benefits in the form of jobs for black citizens and financial services to the black business community would have been lost. Such an unfortunate result would have been anomalous when such major efforts were being made by the federal government to encourage the ownership and operation of black business enterprises.

When faced with these unusual circumstances in 1969, Congress chose to enact special legislation (section 101(1)(4) of the Tax Reform Act of 1969) specifically designed to provide a special exception to the excess business holdings divestiture requirements of section 4943 of the Code to permit the Herndon Foundation to retain permanently majority control over the Atlanta Life Insurance Company. The Senate had proposed outright exemption of the Herndon Foundation's "present holdings" in Atlanta Life stock (Senate Rep. 91-552, 91st Cong. 1st Sess., at p. 44, 1969-3 C.B. 423). However, in Conference the Herndon Foundation's special provision was changed to its present form. No explanation was given for this change (See 1969-3 C.B. 644, 647-648; General Explanation of the Tax Reform Act of 1969, prepared by Staff of Joint Committee on Internal Revenue Taxation, pp. 45-46).

Section 101(1)(4) of the Tax Reform Act of 1969 modified the grandfather provisions of section 4943(c)(4) to permit the Foundation to retain permanently, without the imposition of the taxes imposed by section 4943 of the Code, 51 percent of the voting stock of Atlanta Life. The manifest purpose of this savings provision was to prevent the Herndon Foundation from being required to dispose of its controlling interest in Atlanta Life, which it otherwise would have had to do to comply with the Act's general limitations on the permitted holdings by private foundations of interests in business enterprises.

Section 101(1)(4) of the 1969 Act modified section 4943(c)(4) only as applied to the stock owned by a foundation in a business enterprise which was incorporated, licensed and regulated, the sales contracts of which were regulated, and the professional representatives of which were licensed by state regulatory agencies in at least 10 states as of May 26, 1969.

Such stock held on that date, may only have been acquired by the foundation by gift, devise or bequest. Another condition was that substantially all the assets of the foundation had to consist of more than 90 percent of the stock of the business enterprise; but for this purpose, stock held in a trust created before May 27, 1969, of which the foundation was the remainder beneficiary, was deemed held by the Foundation on May 26, 1969. The only conditions imposed on the foundation's ownership of such corporation's stock afterwards, for purposes of the continued application of the special provisions of section 101(1)(4), are that: "the foundation does not purchase any stock or other interest in [such business enterprise] after May 26, 1969, and does not acquire any stock or other interest in any other business enterprise which constitutes excess business holdings under section 4943. (Section 101(1)(4)(B)(i).)"

As of May 26, 1969, Atlanta Life satisfied the conditions set forth in the statute and thus the Herndon Foundation was permitted to hold 51 percent of the stock of Atlanta Life.

The Internal Revenue Service ruled in 1973 that the Herndon Foundation is an organization described in section 101(1)(4)(A) of the Tax Reform Act of 1969 with respect to its holdings in Atlanta Life; that any part of the holdings owned by the Herndon Trust on May 26, 1969, which pass to the Foundation will constitute "present holdings" under section 4943(c)(5) of the Code; that during the 15 year period which begins on May 26, 1969 shares of Atlanta Life actually held by the Foundation from that date may be retained without tax under section 4943; and that Atlanta Life shares received by the Foundation from the Herndon Trust may likewise be held for 15 years without adverse tax consequences under section 4943. (See attached copy of 1973 IRS ruling).

After enactment of the Tax Reform Act of 1969, however, it became apparent that, absent further relief, the Congressional purpose to permit the Herndon Foundation to retain permanent control of Atlanta Life eventually would have been frustrated by the application of section 4942(d) (the so-called "pay-out" rule). This provision required a private foundation to make annual charitable distributions of the greater of its adjusted net income or a stated percentage (now 5 percent) of the value of its investment assets (known as the minimum investment return). Since Atlanta Life's stock normally could be expected (as a life insurance company) to produce a current yield substantially lower than its minimum investment return, the Foundation would have been required to divest itself of Atlanta Life stock to fund the payout requirement under section 4942(d). Thus, application of section 4942(d) in this case ultimately would have frustrated the purpose of section 101(1)(4) by making it impossible for the intended 51 percent controlling interest to be permanently retained.

Therefore, in order to effectuate fully the relief intended by Congress in enacting the business holding savings provision in 1969 to preserve the Herndon Foundation's relationship with Atlanta Life, Congress subsequently added in 1974 section 101(1)(3)(F) to the Tax Reform Act of 1969. Section 101(1)(3)(F) provided that, in applying section 4942(d) of the Code to a foundation described in section 101(1)(4)(A) (i.e., the Herndon Foundation), the minimum investment return (computed under section 4942(e)) and the adjusted net income (computed under section 4942(f)) shall be determined without regard to the foundation's stock holdings described in section 101(1)(4)(A) (ii) of the Tax Reform Act of 1969 (i.e., the Atlanta Life stock), but the income derived from such stock holdings shall be added to the annual amount that the foundation must pay out to public charity.

The addition of section 101(1)(3)(F) to the Tax Reform Act of 1969 was supported by the Treasury Department in its report on the proposed legislation to the Chairman of the House Committee on Ways and Means. (See copy attached.) Much of the above discussion, including the description of the Congressional intent in enacting the prior special legislation ("specifically designed * * * so that the Herndon foundation could permanently retain majority control over Atlanta Life Insurance Company"), is taken directly from the Treasury's favorable report.

Furthermore, the Senate Report (S. Rep. No. 93-986) on the bill which became Public Law 93-490, which added section 101(1)(3)(F), stated expressly as follows:

"Under this exception [section 101(1)(4) of the Tax Reform Act of 1969], the Herndon Foundation is permitted to retain up to 51 percent of the stock in the Atlanta Life Insurance Company. However, it has come to the Committee's attention that the charitable distribution provisions * * * are forcing divestiture of the stock that Congress determined the Herndon Foundation should be permitted to keep.

"As a result, the intent of Congress in 1969, that foundations like the Herndon Foundation should be able to retain 51 percent of the stock of a company, is being frustrated because of the operation of the minimum investment return provision."

If Congress had held any intention that the Herndon Foundation's interest in the Atlanta Life Insurance Company should be permitted ultimately to be reduced below the 51 percent level, there would have been no need to enact the second savings provision to prevent the gradual distribution of the stock pursuant to section 4942. Thus, it is clear that Congress intended that the Herndon Foundation be permitted to retain permanently 51 percent of the stock of Atlanta Life.

The general provisions of Section 4943 had been added to the Internal Revenue Code by Congress in 1969 to limit the involvement of private foundations in business enterprises by requiring reduction of business holdings to certain prescribed percentages. In general, the permitted holdings are determined under section 4943(c)(2), but a "grandfather provision" was included in section 4943(c)(4), to permit higher levels of permitted holdings for so-called "present holdings" on May 26, 1969. However, only (as far as we are aware) in the case of the Herndon Foundation's present holdings in Atlanta Life was any private foundation permitted to retain permanent majority control (i.e., 51 percent of the stock of a particular business enterprise (namely, the Atlanta Life Insurance Company).

Since the completion of the administration of Mr. Herndon's estate at the end of July 1981, Atlanta Life and the Foundation have been giving serious consideration to ways of dealing with the impending divestiture requirements of section 4943, but serious problems have been encountered.

In the first place, utilizing a redemption to eliminate the potential excess holdings is not feasible because of the very high percentage of the outstanding shares of Atlanta Life stock presently held by the Foundation and its DP group. Also, there is some question whether such a redemption would be permitted by Georgia insurance regulations, since these regulations appear to permit redemption of a life insurance company's stock only to fund employee benefit plans. (See Attachment.) Of course, a redemption would automatically reduce the overall number of Atlanta Life shares left outstanding. Thus, any redemption of Atlanta Life shares held by the Foundation would increase the percentage of shares held by its DP group, which would be counterproductive. Moreover, to reduce the excess percentage of the Foundation's holdings to the necessary extent, an excessively large amount of Atlanta Life's much needed surplus would be dissipated.

Another serious problem arises because there presently is no public market for Atlanta Life shares. Thus, considering the present state of the economy, the Foundation cannot expect to sell its excess shares for their true value in the normal course within the short period permitted by section 4943.

In an effort to meet the forthcoming disposition deadline of section 4943, the Foundation's trustees have been exploring the possibility of "swapping" excess shares with another foundation facing a similar section 4943 problem, or with some willing public charity. However, even of such a "swap" could be achieved, it would present considerable difficulties and could produce undesirable results (e.g., the difficulty of finding a suitable corporate "swap-mate"; the difficulty and expense of valuing Altanta Life shares; the necessity of avoiding another section 3943 problem with respect to the acquired shares; the need to avoid the "jeopardy investment" restrictions of section 4944 and to satisfy general fiduciary investment standards).

Atlanta Life also has considered whether it could resolve the section 4943 problem by using its stock to expand its business (assuming this should prove desirable), thus diluting the present holdings of the Foundation and its DP group in Atlanta Life. However, because the Treasury Department and the Internal Revenue Service have failed since 1969 to issue regulations governing mergers and other acquisitions under section 4943, Atlanta Life does not know the extent to which it could expand by making acquisitions without causing the Foundation to acquire constructive ownership in other business enterprises possibly in violation of its special legislation, which forbids the Foundation from acquiring any stock or other interest in any business enterprise (other than Atlanta Life) which constitutes excess business holdings under section 4943.

Under these circumstances, the only safe course apparently available to reduce the Foundation's excess holdings by May 26, 1984, appears to be for the Foundation to give away the excess shares to one or more public charities that would take the shares and hold them for the dividends. Such a disposition, of course, would have the serious disadvantage of substantially depleting the Foundation's future dividend income. However, this income is needed to carry out the Foundation's charitable work, including maintenance and operation of the Herndon Home as an historic site and museum. (The IRS favorably ruled that the Foundation could receive, maintain and operate this property as a charitable program—see attached copy of 1979 ruling). This facility is of special importance and benefit to the black people of Atlanta and the Southeast. Accordingly, giving away large scale blocks of Atlanta Life shares to other organizations would only be done as a last resort.[1]

Atlanta Life submits--based upon the explicit statutory language relating to the conditions under which the Herndon Foundation was expressly permitted to retain control of Atlanta Life and on the clear intent of Congress that such control be retained permanently in order to promote and preserve Atlanta Life as an outstanding example of successful black capital enterprise—that the divestiture provisions of section 4943 should not apply to any of the Foundation's present holdings of Atlanta Life's stock. Why, since the Foundation was expressly permitted to retain majority control (51 percent) of Atlanta Life, should the Foundation be required to dispose of present holdings of Atlanta Life stock in excess of that amount (especially in view of the present circumstances and economic forces that would make such a divestiture in the foreseeable future extremely impractical and counterproductive to the continued well being of both Atlanta Life and the Foundation)?

However, as section 4943 presently applies, the Foundation will be required to dispose of about 18 percent of the stock of Atlanta Life by May 26, 1984 and further dispositions thereafter will be required to reduce the excess holdings of the Foundation and its DP group in Atlanta Life down to the 51 percent permitted by its special legislation. At the very least, more time needs to be given—by enactment of legislation in 1983 extending the divestiture deadline proscribed for early 1984—within which Congress, Treasury, Atlanta Life and the Foundation, and any other foundations similarly concerned, can seek to find permanent solutions to this and other serious section 4943 problems.

INTERNAL REVENUE SERVICE,
Washington, D.C.

ALONZO F. AND NORRIS B. HERNDON FOUNDATION, INC.,
Atlanta, Ga.

GENTLEMAN: This refers to your request dated April 6, 1973, for a series of rulings under section 4943 of the Code and section 101(1)(4)(A) of the Tax Reform Act of 1969.

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[1] The Herndon Foundation's return (Form 990-PF) for 1982 shows total expenditures of about $541,000 for restoring, maintaining and operating the Herndon mansion and about $30,000 contributed to public charities; total receipts for the year were approximately $231,000, of which $200,000 consisted of dividends on Atlanta's Life stock.

You are an organization which is exempt under section 501(c)(3) of the Code and which is a private foundation as defined in section 509 of the Code. You were incorporated on November 22, 1950. You state that you expended substantially all of your adjusted net income as defined in section 4942(f) for purposes described in section 501(c)(3) during the last five tax years ending on or before December 31, 1970. As of May 26, 1969, you owned 12,457 shares of the voting stock of the Atlanta Life Insurance Company, which amounted to 20.865 percent of the voting stock of Atlanta Life Insurance Company. Subsequent to May 26, 1969, you have not purchased and do not plan to purchase stock or other interests in Atlanta Life Insurance Company.

The Norris Bumstead Herndon Trust, hereinafter referred to as the "Herndon Trust", owned 42,707.86 shares of the voting stock of Atlanta Life Insurance Company as of May 26, 1969. The Herndon Trust was formed by your creator, Norris B. Herndon. The Herndon Trust is a revocable trust created prior to May 26, 1969, whose terms as of May 26, 1969, provided for transfer to you all of its stock in the Atlanta Life Insurance Company as of the death of Norris B. Herndon. The Herndon Trust has transferred stock to you and anticipates possibly transferring stock to you during the life of Norris B. Herndon. The trust instrument was amended once, with this amendment occurring on June 20, 1969. This amendment was restricted to changing powers and procedures of the trustees during sufferance of a disability by Norris B. Herndon and other provisions concerning appointment and powers of trustees.

Norris B. Herndon executed a will on November 25, 1955, specifically giving all of his stock in the Atlanta Life Insurance Company to you, which gift was only restricted by a provision that the gift would only be reduced in amount where the gift of all of the stock would be illegal. The only codicil executed with respect to this will was restricted to a change in the executors named under the will.

The Atlanta Life Insurance Company is an insurance company whose contracts and policies are regulated by State Regulatory agencies in 11 states. You and the Herndon Trust owned 92.4 percent of its voting stock as of May 26, 1969. Such stock was all acquired by gift.

Based on the information, summarized above, in your request dated April 9, 1973, we have determined the following:

(1) You are an organization described in section 101(l)(4)(A) of the Tax Reform Act of 1969 with respect to your holdings in the Atlanta Life Insurance Company.

(2) All or any part of the 42,707.86 shares of the stock of Atlanta Life Insurance Company owned by the Herndon Trust on May 26, 1969, which pass to the Herndon Foundation during the life of or at the death of Norris B. Herndon will constitute holdings described in section 4943(c)(5) of the Code.

(3) During the 15 year period described in section 4943(c)(4)(B)(ii) of the Code which begins on May 26, 1969, none of the 12,457 shares of stock in the Atlanta Life Insurance Company which you have retained will be subject to the taxes on excess business holdings imposed by section 4943 of the Code.

(4) None of the shares of stock ruled above as being described in section 4943(c)(5) with respect to you will be subject to the taxes on excess business holdings imposed by section 4943 during the period such shares are in fact held by the Herndon Trust and during the 15 year period following the date such shares of stock are distributed to you pursuant to the terms of the Herndon Trust. The 15 year period begins to run only with respect to that portion of the shares of stock which have in fact been distributed.

Since you are an organization described in section 101(l)(4)(A) of the Tax Reform Act of 1969 with respect to holdings in the Atlanta Life Insurance Company, you are permitted, subsequent to the 15 year period beginning on May 26, 1967, to hold 51 percent of the voting stock of Atlanta Life Insurance Company reduced by the amount of such stock held by all disqualified persons with respect to you.

We are sending a copy of this letter to your key District Director, Atlanta, Georgia.

Sincerely yours,

Duane B. Johnson,
Director, Miscellaneous and
Special Provisions Tax Division.

THE DEPARTMENT OF THE TREASURY,
Washington, D.C., June 15, 1972.

Hon. WILBUR D. MILLS,
Chairman, Committee on Ways and Means,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Treasury Department on H.R. 13289, "A BILL To amend section 101(l)(3) of the Tax Reform Act of 1969 in respect of the application of section 4942(d) of the Internal Revenue Code of 1954 to private foundations subject to section 101(l)(4) of the Tax Reform Act of 1969.

One of the basic goals underlying the Tax Reform Act of 1969 was to eliminate the use of private foundations to maintain control of business enterprises. Foundation control of business interests had produced a number of undesirable results. Competing businesses owned and operated by taxable entities were placed at a competitive disadvantage; benefits to charity were deferred through the accumulation of funds in controlled businesses; and foundation managers became primarily concerned with business affairs rather than with the charitable objectives of their foundations. Section 4943 was added to the Internal Revenue Code by Congress in 1969 to limit the involvement of private foundations in business enterprises by requiring divestiture of business holdings down to certain prescribed percentages.

Another basic, and closely related, goal underlying the provisions of the Tax Reform Act of 1969 was to produce a guaranteed, current payout by private foundations for charitable purposes. Under the law prior to the Tax Reform Act, if a foundation invested in assets that produced no current income, the foundation did not have to make any distributions for charitable purposes. Section 4942(d) was added to the Code by Congress in 1969 to produce such charitable distributions and to prevent avoidance of the income of the income distribution requirement by foundations which invested in closely held or growth stock, in nonproductive real estate, or in other low yield investments. Thus, section 4942(d) requires a foundation to make current charitable distributions of the greater of its adjusted net income or a percentage of its investment assets.

In formulating the provisions of the 1969 Act governing the divestiture of excess business holdings, Congress considered the unique circumstances of the Herndon Foundation, Inc. of Atlanta, Georgia. The Foundation was chartered on November 22, 1950 and received its exemption letter on December 18, 1952. The only asset of the Foundation, other than a nominal amount of cash, is stock in Atlanta Life Insurance Company. On December 31, 1968 this was represented by 12,447 shares, or 20.7 percent of the total shares of the Company outstanding. The creator of the Foundation, Norris B. Herndon, owned 42,707 shares representing 71.2 percent. Under the terms of Mr. Herndon's will, and a revocable trust established by him, all of his stock will go to the Foundation on his death. Mr. Herndon has no close relatives.

Atlanta Life Insurance Company is a unique example of black capitalism, founded in 1905 by a former slave, Alonzo F. Herndon. Atlanta Life stock has always been closely held. There is no present market for this stock, and there does not exist in the black community sufficient financial strength to purchase the stock of the Company and maintain it as a going business. If a sale of the stock or a merger had been necessary to comply with the private foundation provisions of the Tax reform Act of 1969, control of the Company would very likely have passed to the white community. Substantial benefits in the form of jobs for black people and financial services in the black community would have been lost. Such a result would have been anomalous at a time when major efforts were being made to encourage the ownership and operation of black business enterprises.

When faced with the above circumstances in 1969, Congress chose to enact special legislation (section 101(1)(4) of the Tax Reform Act of 1969) specifically designed to ease the excess business holdings divestiture requirements of section 4943 of the Code so that the Herndon Foundation could permanently retain majority control over Atlanta Life Insurance Company.

Section 101(1)(4)(A) of the Tax Reform Act of 1969 permits the Foundation to retain without the imposition of the taxes imposed by section 4943 of the Code, 51 percent of the voting stock of the Company. The manifest purpose of this savings provision was to prevent Herndon from being required to dispose of its controlling interest in the Company which it would otherwise have had to sell to comply with the Tax Reform Act of 1969.

It is now apparent that, absent further relief, this Congressional purpose will be frustrated by the application of section 4942(d) of the Code. This provision requires a private foundation to make annual charitable distributions of the greater of its adjusted net income or a percentage of its investment assets (known as the minimum investment return). Since the Company's stock normally can be expected to produce a current yield (approximately 1.3 percent) substantially lower than its minimum investment return, the Foundation would be required to divest itself of such stock to fund its payout under section 4942(d). The application of section 4942(d) in this case would ultimately frustrate the purpose of section 101(1)(4)(A) by making it impossible for the intended 51 percent controlling interest to be retained.

In order to effectuate fully the relief intended by Congress in enacting this savings provision in 1969, H.R. 13289 provides that, in applying section 4942(d) of the Code to a foundation described in section 101(1)(4) (i.e., the Herndon Foundation), the minimum investment return (computed under section 4942(e)) and the adjusted net income (computed under section 4942(f)) shall be determined without regard to the foundation's stock holdings in the company, but the income derived from such stock holdings shall be added to the annual amount that the foundation must pay out to public charity.

Although the Treasury Department objects to the principle of H.R. 13289 insofar as it represents an exception to the distribution requirements of section 4942, we also recognize the unique circumstances that motivated the Congressional decision to give special treatment to the Herndon Foundation to prevent a black controlled business from passing to the white community, and we appreciate that H.R. 13289 may be a necessary complement to section 101(1)(4) to insure this objective.

Thus, we are not opposed to H.R. 13289 in light of the special background and purpose of section 101(1)(4) and the unique circumstances of this case which were recognized and endorsed by Congress in 1969. We remain opposed, however, to any erosion of the minimum distribution requirements which we proposed in 1969. Accordingly, our position on H.R. 13289 does not constitute an endorsement of the principle of the bill, but rather a confirmation of the Congressional recognition of the special circumstances of this case.

The Office of Management and Budget has advised the Treasury Department that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely yours,

FREDERIC W. HICKMAN,
Deputy Assistant Secretary.

GEORGIA CODE

OPINIONS OF THE ATTORNEY GENERAL

33-11-33. Prohibited investments; underwriting of offering of securities or property by other persons

(a) In addition to investments excluded pursuant to other provisions of this title, an insurer shall not directly or indirectly invest in or lend its funds upon the security of:

(1) Any investment or security which is found by the Commissioner to be designed to evade any prohibition of this title;

(2) Issued shares of its own capital stock, except for the purpose of mutualization under Chapter 14 of this title or in connection with a plan approved by the Commissioner for purchase of the shares by the insurer's employees or agents;

(3) Except with the advance consent of the Commissioner, securities issued by any corporation or enterprise the controlling interest of which is, or will after acquisition by the insurer be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries, to the extent otherwise authorized by this chapter, shall not be subject to this provision.

(4) Any note or other evidence of indebtedness of any director, officer, or controlling stockholder of the insurer, except as to policy loans authorized under Code Section 33-11-24.

(b) No insurer shall underwrite or participate in the underwriting of an offering of securities or property by any other person. (Code 1933, § 56-1035, enacted by Ga. L. 1960, p. 289, § 1.)

INTERNAL REVENUE SERVICE,
Washington, D.C., October 30, 1979.

ALONZO F. AND NORRIS B. HERNDON FOUNDATION INC.,
Atlanta, Ga.

DEAR SIR: This is in reply to the August 29, 1979 request for a ruling that the receipt, maintenance, and operation of the Alonzo F. Herndon home as a public museum and historical site is an activity in furtherance of your charitable and educational purposes.

You were recognized as exempt from federal income tax in December 1952 under section 101(6) of the Internal Revenue Code of 1939, the predecessor of section 501(c)(3) of the Internal Revenue Code of 1954. You were classified as a private foundation within the meaning of section 509(a) of the Code.

Based on the information submitted and assuming you follow your proposed plan of operations, we have concluded that the receipt of the Alonzo F. Herndon family home and its preservation and operation as a public museum are in furtherance of your charitable and educational purposes and will not effect your exempt status under section 501(c)(3) of the Code.

If your method of operation changes, please let your District Director know so that he can consider the effect of the change on your exempt status.

We are informing your key District Director of this action. You should keep this ruling for your permanent records.

Sincerely yours,

J. E. GRIFFITH,
Chief, Rulings Section 1,
Exempt Organizations, Technical Branch.

AT THE FOOT OF THE MOUNTAIN,
Minneapolis, Minn., June 18, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR CHIEF COUNSEL SALMON: As the Managing Director of a small professional theater in Minneapolis, I am writing to the Oversight Committee on the House Ways and Means Committee to inform you of the crucial role community, corporate, and private foundations play in our performance lives.

At the Foot of the Mountain is the oldest continuously producing professional women's theater in the country. Throughout our ten-year history we have created plays and programs, by and about women, and have made them available to target audiences we identify as the culturally disenfranchised: women, minorities, the aging, the young, the poor, the unemployed. We are able to serve these audiences because (a) we price our tickets and fees on a sliding scale based on ability to pay, and (b) we receive contributions from a variety of foundations to support our work.

In the last three years, we have increased our revenues from $68,000 in fiscal year 1980 to $185,000 in fiscal year 1983. Of this year's income, $85,000, or 46 percent, was earned from box office, touring, sales, etc. (a very high percentage for a small experimental theater like ours). The $100,000 balance (54 percent) was contributed by public agencies ($20,000, or 11 percent), individuals ($20,000, or 11 percent), and foundations ($60,000, or 32 percent).

As you can see, 60 percent of this year's contributed income was from foundations. Their confidence in our original creative work allows us to employ more artists (15 on full-time salary this year, 10 on part-time) who create more and better programs which generate more earned income.

There are several projects we have created in the last three years which would have been impossible without foundation support:

"Junkie!," a company-created ritual drama about addiction and recovery.

Production and touring

Minneapolis Foundation	$10,000
General Mills Foundation	5,000
Otto Bremer Foundation	3,000
First Bank System Foundation	1,000
Northwestern National Bank	1,000
Jostens Foundation	750
Whitney Family Foundation	750

"Junkie!," (60-minute 16mm color film adaption of the play).

Northwest Area Foundation	$10,000
Butler Family Foundation	5,000
Ruth Mott Fund	5,000
St. Paul Companies	5,000
Whitney Family Foundation	2,000

"Ashes, Ashes, We All Fall Down," a company-created ritual drama about nuclear madness and our cultural denial of death.

Production and touring

Otto Bremer Foundation	$7,000
Minneapolis Foundation	5,000

"Ashes, Ashes, We All Fall Down," (90-minute ¾" color video).

Harburg Foundation	$2,000
NCR Foundation	1,000
Northwest Area Foundation	220

1983 National Summer Workshop (for 20 selected students from around the country).

Northwest Area Foundation	$18,500

General operating support

McKnight Foundation	$15,000
United Arts Fund	10,500
General Mills Foundation	3,500
Northwestern National Bank	1,000

New scripts

Dayton Hudson Foundation	$12,000
Jerome Foundation	6,000

With the above-named foundation grants since 1980, 50 full-time artists have been employed; 5 plays and 2 media projects have been created and produced; the first national summer workshop for women theater artists (8 weeks of intensive workshops and rehearsals will culminate in the production of a new adaption of Sophocles' ANTIGONE) is being offered; and we have reached more than 50,000 new audience members.

Please make this letter an official part of the Subcommittee hearing record.

Like us, most performing arts organizations would be under staffed, under paid, and under developed without significant foundation support. Thanks for your attention.

Sincerely,

PHYLLIS JANE ROSE, *Managing Director.*

AUSTIN COLLEGE,
Sherman, Tex., June 16, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: It has recently come to my attention that the Oversight Subcommittee of the House Ways and Means Committee has scheduled two days of hearings on private foundations for June 27–28, 1983. It is my understanding that these hearings will be for the purpose of examining the role of private foundations—what they are achieving and in what ways their efforts impact American society.

As the president of an independent liberal arts college, I wish to express my strong and fervent support for the work which is being done by private foundations throughout the country. The spirit of philanthropy which is embodied in the work of these foundations is unique both in modern history and to the United States. Since the early 1900's, gifts from such private sources have been essential to the development of non-profit, tax-exempt institutions, many of which can be considered among our nations finest organizations. The American Red Cross is one example.

Austin College is now in its 134th year, and our history is replete with examples of generous support from private foundations. The trustees and administration of the College look upon these gifts and grants as having played an absolutely essential role in the growth and development of this institution. Each year, we attempt to raise at least 20 percent of our income from private gifts in order to make up the differnece between tuition and income from other sources. Over the last five years, approximately $2 million per year has come from private foundations and this income has been crucial for the sustenance and renewal of our educational programs.

In 1978, a grant in the amount of $1 million was awarded to Austin College from the Sid W. Richardson Foundation of Fort Worth for the endowment of our Faculty Career Development Program. This grant provided permanent funding for what was considered at the time to be a very innovative approach to faculty development. Funding for this program, which has served as a model for other colleges in the Southwest, would not have been possible without the insight and perceptiveness of the administrators of the Sid W. Richardson Foundation. Their decision was based on their belief that only through faculty development and renewal can an institution such as Austin College be assured that its educational programs will always remain fresh, stimulating, and creative. A recent Career Development Conference on the Austin College campus, attended by administrators and faculty from around the nation, evaluated this model program and concluded that it has been a tremendous success and that it has added immeasurably to the overall quality of our educational program.

Foundation support has proven invaluable to Austin College in other areas. The current trend toward futher restrictions in aid to students from the federal government has made the securement of endowed scholarship funds an urgent priority for Austin College. The George Foundation of Richmond, the Hillcrest Foundation of Dallas, and the Bruce McMillan, junior Foundation of Overton are only three examples of private foundations in Texas which have recognized this great need and responded with major grants for endowed scholarship funds at Austin College.

In 1970, a gift of $1 million was given to Austin College by Mr. and Mrs. Cecil H. Green of the Green Foundation, Dallas, for the construction of the Ida Green Communications Center, a multi-purpose theatre/conference center. This gift included all of the equipment for the TAGER television network, an electronic system designed to deliver education-related television programming to student and institutional users throughout north Texas. The TAGER program is a major service provided by the Association of Higher Education and has been funded since its inception by Cecil and Ida Green. Through Austin College's affiliation with AHE and because of the fine gift of TAGER equipment from the Green Foundation, we are able to provide our students with the most advanced inter-institutional televised educational programming in the state. This is a fine example of how a private foundation can be instrumental in advancing the collaboration between different institutions whose goal is the improvement of human services.

It has been my intention to offer compelling examples of how private foundations have been an indispensable part of Austin College's ability to grow and develop into the distinguished institution it is today. I would be opposed to any legislation which would impair or hinder the philanthropic giving patterns of America's private foundations, and I would appreciate this letter being made an official part of the hearing record.

Sincerely,

HARRY E. SMITH, *President.*

PSYCHOLOGY DEPARTMENT,
SOUTHERN METHODIST UNIVERSITY,
Dallas, Tex., June 10, 1983.

COMMITTEE ON WAYS AND MEANS.

DEAR COMMITTEE MEMBERS: As a young scientist interesting in the study of how children learn to cope with stress, I am deeply indebted to the support of the Foundation for Child Development. Over the past year, this Foundation has allowed me and my colleagues to complete a number of projects that would not have been possible without their support. Due to the decreasing support of the Federal Government in many areas of scientific inquiry the role of the private foundations in maintaining progress in a number of fields is increasing.

The projects that I have been conducting have allowed collaborative research work between Southern Methodist University, Stanford University, the University of Minnesota, and Vanderbilt University to continue. Again, this work would not have been possible without the support of the Foundation for Child Development. These projects are concerned with how children learn to cope with stress and control their emotional reactions to situtations. Such work is vital to our attempts to understand and control affective disorders, (depression) a syndrome which powerfully detracts from the lives of millions of Americans each year.

Research funds aimed at attempts to improve our ability to prevent mental disorders is surely one of the most cost effective ways to spend social program funds. When the costs of unsuccessful prevention are considered (such as the $30,000 per year per prisoner spent in many prisons) the cost of funding psychological research programs of high quality appear cost effective indeed. Because funding from the Federal Government is sparse and declining, the support of private foundations such as the Foundation for Child Development, is increasingly important to our attempts to improve the quality of life for American children.

I request that this letter be made an official part of the hearing record.

Thank you.

Sincerely,

R. CHRISTOPHER BARDEN, Ph.D.,
Assistant Professor of Psychology.

BAYLOR COLLEGE OF MEDICINE,
DEPARTMENT OF OPHTHALMOLOGY,
Houston, Tex., June 19, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building,

DEAR MR. SALMON: It is my understanding that the Oversight Subcommittee of the House Ways and Means Committee will be holding two days of hearings on June 27-28, 1983, on the various roles of private foundations. As chairman of an academic department involved in diverse programs of basic and clinical research and a personal recipient of support from the Sid W. Richardson Foundation of Fort Worth, Texas for several years, I am intimately familiar with the invaluable support of private foundations in biomedical research. In 1981, this department received in excess of $2 million in research funds. Although the majority of support was derived from the National Eye Institute, $634,433 were received from private foundations, including the Sid W. Richardson Foundation, Retina Research Foundation, Clayton Foundation, Brown Foundation, and Farish Foundation. Without these private funds, we would have not been able to initiate new studies and continued established research programs in the cause, prevention, and treatment of blindness. Among the projects supported by gifts from private foundations were studies in ocular infectious diseases, normal and abnormal aspects of binocular vision, the molecular basis of normal communications in the retina, the metabolism of the retina in tissue culture, and the biochemistry of retinal degenerations. These investigations have brought us closer to understanding and defining the mechanisms by which herpes simplex virus causes corneal blindness, the treatment of severe bacterial and fungal infections of the eye, the role of vitamin E in preventing blindness among premature infants receiving supportive oxygen therapy, the mechanisms of retinal damage in retinitis pigmentosa, the methods by which various systemic drugs produce retinal damage, the structural basis for loss of vision (amblyopia) following deprivation of sensory input, and the mechanism of impulse and nerve transmission from the retina to the brain. Gifts from private foundations help establish new faculty members and investigators in order that they might subsequently obtain long-range support from the National Eye Institute and other federal sources. Furthermore, these grants are made available within short time intervals in order to permit investigators to pursue new and exciting developments well ahead of schedules afforded by grant procurement designed from federal sources.

I am confident that the Oversight Subcommittee will learn from diverse sources the extent and diversity of the value of private foundations in academic institutions, particularly those involved in biomedical research, education, and patient care. We consider this department to be one of the highest ranked departments of ophthalmology in this country with a splendid record of accomplishments in research and innovations in post-graduate education. Our emerging and advancing role has been greatly enhanced by gifts from private foundations and we look ahead with continued dependency upon such support. I urge the Subcommittee to consider fully the vital role that these foundations have among various scholarly institutions.

Yours sincerely,

DAN B. JONES, M.D.,
Sid W. Richardson Professor and Chairman.

MINNEAPOLIS, MINN., *May 26, 1983.*

Congressman RANGEL,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN RANGEL: I notice from the Wall Street Journal of May 25th that you will be holding in the latter part of June hearings of a sub-committee of the Ways and Means Committee to consider certain matters concerning contribu-

tions to private foundations as well as (I hope) the unfortunate tax which is levied on foundation income.

My family has a small foundation made up largely of stock in a corporation with which my family and I have been associated for many years. One result of this is that the foundation has a large capital gain as measured by the tax laws in the value of the corporate stock. I have just had the dubious pleasure of signing a check for $16,687.27 as a payment of the 2 percent tax levied on a net cash income (dividends and interest) that totalled for this past year $176,000.00, but of course we had to pay a tax on that capital gain as well—a tax which is really a "capital levy" on the assets of the foundation and unrelated to any ordinary cash income. During the past year we sold some of the stock and realized on the capital gain.

I have discussed with Congressman Frenzel in past years the shortsightedness of drawing these funds out of the community here in Minnesota and sending them for some other usage by the Federal Government. At a time when the Federal Government is very properly chopping many programs, it should be making it attractive for private individuals to make contributions which would pick up the cost of the programs that necessarily otherwise will be cut or aborted.

Thus after discussing the unfortunate tax, I go beyond it to say that it seems to me a contribution to a private foundation should be accorded the same kind of deductibility on personal tax returns that is accorded a gift to any other 501C3 organization. These private foundations are audited by IRS agents in the same way that so-called "public charitable organizations" are and therefore the assets which they hold and the income which they receive will be used just as carefully and just as legally under those auspices as they would under the other.

In the interest of promoting private philanthropy I strongly suggest both (a) that the tax be eliminated and (b) that there be no special treatment of nor limitations upon contributions to private foundations.

Yours very truly,

ATHERTON BEAN.

NORTH CENTRAL WASHINGTON COUNCIL,
BOY SCOUTS OF AMERICA,
Wenatchee, Wash., June 8, 198

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight,
Committee on Ways and Means, Washington, D.C.

DEAR CONGRESSMAN RANGLE: The North Central Washington Council Boy Scouts of America, a non-profit agency incorporated under the State of Washington, wishes to convey the following message concerning one of the finest businesses in North Central Washington. Wells and Wade Hardware and Fruit Company are one of the pioneer businesses in the area, dating back to 1902, and is still one of the leading firms in North Central Washington. To be successful in business for over eighty-one years shows not only good sound management, but also operation success in growth, goal setting, and management that not only cares for its employees, but the community as a whole.

The community of Wenatchee, as well as the 4½ counties of North Central Washington is a better place to live because of the far-sightedness of the founding of Wells & Wade, Inc., A.Z. Wells. We know for a fact almost $4,000,000 has been distributed by the A.Z. Wells Foundation to many non-profit organizations, agencies, and hospitals since 1950 when the Foundation and Trust was set-up by A.Z. Wells. We, the Boy Scouts of America have benefited over the years to the point our single largest contributor, including the United Way, is from the A.Z. Wells Foundation.

We are writing this letter to raise our concern as to the projected change in the tax laws that would effect the future of Wells and Wade, Inc. We would hope the present structure of the foundation will be able to continue in its present form and not to deviate from the original wishes of the founder, A.Z. Wells.

We, as the Executive Board of the North Central Washington Council, and the many friends and beneficiaries of the A.Z. Wells Foundation, hereby unanimously request the continuation of the present structure and mode of operation.

Most sincerely,

NORTH CENTRAL WASHINGTON COUNCIL
BY WILLIAM L. DALTON,
Secretary and Scout Executive.
MARVIN L. WHITE, *Council President.*
(and 13 others).

NATIONAL OFFICE,
BOY SCOUTS OF AMERICA,
Irving, Tex., June 16, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I have noted that you have some important meetings scheduled on private foundations. This is a topic of major interest to us because of the substantial impact it has upon gifts to 413 local councils and the National Council, Boy Scouts of America.

We have just completed successfully a $49,000,000 campagin over the last three years for capital improvements, innovative programs, and other priorities for the Boy Scouts of America for the 80's. Some of our most significant gifts have come from private foundations.

One of the first pacesetting gifts came from the Sid W. Richardson Foundation of Fort Worth, Texas. It not only helped us reach our goal but was an example of generosity that influenced the level of other gifts. Their gift made it possible for us to construct our National Office which is so important to 4½ million members of the Boy Scouts of America.

It seems to me that with the special emphasis upon Private Sector Initiatives and reduced government expenditures, this is a very appropriate time to make the rules as liberal as possible to stimulate private philanthropy.

There are many major programs that are being assisted in a very substantial way by continuing gifts from private foundations.

Thank you for your leadership on this important project. I will be glad to provide specific inforamtion if it would be helpful.

Sincerely,

J. L. TARR, *Chief Scout Executive.*

BRAIN RESEARCH FOUNDATION,
Chicago, Ill., June 15, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington D.C.

DEAR SIR: This is to express concern regarding the hearings on private foundations before the Oversight Subcommittee of the House Ways and Means Committee scheduled for June 27–28, 1983.

As a non-profit charitable foundation dedicated to the support of brain research, the value of private foundations has been critical to the success of our own fundraising efforts. Without grants from private sources, our most recent commitment to obtain a PET Scanner at the University of Chicago's Brain Research Institute would not have been fulfilled. The total cost of construction and site preparation for this newly developed imaging system was $821,000, *100%* of which was contributed by the private sector.

With increasing cutbacks in federal funding, competition for grants towards this type of research is fierce. In 1978 and 1979, the University of Chicago submitted a program project for neuroscience research to NIH and NINCDS. Although the proposed research program, which included funds for the PET Scanner, was approved, it was edged out competitively and not funded. Especially hard hit have been basic research programs, projects developed by younger faculty and those of a more speculative nature. Yet it is a fact that only in a very few institutions is there a combined concentration of talent, technologists, scientists and instruments to embark on a research program project with such enormous potential for major medical breakthroughs.

It was to this unique need that we at the Brain Research Foundation responded with a commitment to raise funds for the collaborative research effort at the Brain Research Institute. As demonstrated below, were it not for the magnificent support of private foundations, our goal could not have been achieved. Major donors to the PET Scanner project include:

The Chicago Community Trust	4-year contingent grant	$400,000
The Field Foundation of Illinois Inc.	4-year grant	100,000
The Frederick Henry Prince Testamentary Trusts	Paid in full	50,000
The Kresge Foundation	Challenge grant	150,000
William Randolph Hearst Foundation	Paid in full	40,000
The Seeley Foundation	Paid in full	25,000
The Robert R. McCormick Charitable Trust	Paid in full	100,000

Clearly, private foundations provide another important conduit for funding apart for government or institutional sources which should not be overlooked or dismissed lightly. The significance and value of the private sector, and particularly the activity and the role of private foundations, are vital and ones we wholeheartedly endorse. We therefore request that this letter be made an official part of the hearing record.

Thank you for your consideration and any action you may take in behalf of this important cause.

Sincerely,

Rita W. Jennings, *Executive Director.*

Brandeis University,
Department of Psychology,
Waltham, Mass., June 13, 1983.

Mr. **John J. Salmon,**
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: I am writing on my experience with private foundation support of research, and I ask that this letter be made an official part of the hearing record for the House Subcommittee hearings on foundations (June 27–28).

From February 1, 1982, through April 30, 1983, I was a grantee under the Young Scholars program of the Foundation for Child Development. I received from the Foundation a $15,000 grant for research on "Effects of Socially-Imposed Constraints on Affect and Creativity in Children." This support was invaluable to the conduct of my creativity research; without it, the work would not have been carried out. Previous attempts to find federal funding for the research had been unsuccessful, perhaps reflecting recent changes in funding priorities. The Foundation for Child Development saw the value of basic research on creativity and affect in children, however, and decided to help launch my program of research. The results we have already obtained from the work indicate that it can have important implications, both for basic theories of creativity and for practical applications in education and child-rearing. Some of the more significant outcomes of the research include: (1) a finding that, under some circumstances, working for reward can be detrimental to children's verbal creativity; (2) the development and testing of a new method for measuring verbal creativity; (3) the development and testing of a new method for measuring problem-solving creativity; and (4) the development of a new method for judging children's emotions from facial expressions.

Because this research support has already yielded important results, and because the work begun under this support will continue to yield results for several years, I strongly encourage you to aid in the growth of foundations such as the Foundation for Child Development. Thank you.

Sincerely,

Teresa M. Amabile, Ph. D.,
Assistant Professor.

June 17, 1983.

Mr. **John J. Salmon,**
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: It has come to my attention that the Subcommittee on Oversight of the Committee on Ways and Means, U.S. House of Representatives, will be holding hearings on foundations on June 27 and 28, 1983. The purpose of this letter is to provide the Subcommittee with information that I hope will be useful in its deliberations and which I hope will become part of the official record of the hearings.

I am a physician on the faculty of Medicine and Public Health at the U.C.L.A. Center for the Health Sciences, and on the staff of the Rand Corporation. Over the past ten years, I have been fortunate to have received considerable support from the Carnegie, Commonwealth, Hartford, and Robert Wood Johnson Foundations for health services research. I would like to briefly summarize this support and what it has accomplished.

First, an investment by the Carnegie, Commonwealth, and Robert Wood Johnson Foundations led to the establishment of the Clinical Scholars Program. Over the years, these foundations have invested about $2 million per year in this program, about $300,000 of which went to U.C.L.A. The Clinical Scholars Program was specifically designed to produce a new breed of physicians with expertise in clinical epidemiology and health services research as well as in the classic clinical fields of medicine. These Clinical Scholars have become leaders in the field of medicine that interfaces public health and private medicine. In particular, they have helped to develop measures to assess health status; to understand how different levels of insurance coverage affect the use of services as well as the health status of Americans; to measure the efficiency and effectiveness of general hospital care, intensive care units, and new forms of technology; and to apply principles of decision analysis to the practice of medicine. The training of these uniquely qualified physicians was not covered under grants from the Federal government. Without support from the foundations, these kinds of physicians, who now number over 500 and who have contributed greatly to improving the U.S. health system, would not have been produced.

In terms of a specific research project, I would like to call your attention to a research endeavor that has been generously supported by the Commonwealth Fund and the Pew and Hartford Foundations. This project examines the significance of variations in the use of services. Large differences exist among geographic regions in the expenditures per person in, for instance, the Medicare program. Very little is known about what this variation in both expenditures and use means in terms of the health consequences to the populations who reside in either low or high use areas. The development of policies to change Medicare reimbursement is hampered by lack of information. With the generous help of almost $2 million from the foundations listed above, the research study we have initiated will hopefully provide answers to these questions.

To initiate this investigation, we undertook the difficult but exciting task of bringing together private clinicians, the organizations of private medicine, such as the specialty society organizations and the general medical associations, and the public academic sector. In performing this investigation in this extremely sensitive area, we had to establish relationships between the private and public sectors of the medical community.

The initial products of this research activity have indeed been exciting. We have been able to examine variations in use of services for almost 20% of the Medicare population. We have been able to gain cooperation from the private sector in helping us understand about how to use these data to help develop policies useful to government, professional societies, and medical schools. Without the willingness of foundations to take risks in funding such an endeavor, the knowledge that is being currently developed would not be available for use by groups as diverse as medical schools, professional societies, or the government. In my opinion, at least, the policy process would suffer from the absence of these products and the development of ways to improve the education of physicians and the curriculum of medical schools would also be impeded.

I hope this information has been useful to you. I would also like to indicate that I support H.R. 3043. I think that the foundations that I have been associated with over the past ten years of my career have made possible the implementation of many creative programs. The development of new knowledge that has accrued from these endeavors would not have occurred in the absence of a strong foundation movement in the United States. Foundations play a vital role in our society and make it possible for research advancements to occur at a more rapid pace than otherwise would have been possible.

Sincerely yours,

ROBERT H. BROOK, M.D.,
Professor of Medicine and Public Health, UCLA Center for Health Sciences,
Senior Health Services Researcher, The Rand Corporation.

CAMBRIDGE FORUM,
Cambridge, Mass., June 14, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing to contribute the following comments as an official part of the record when the Oversight Subcommittee holds its hearings on private foundations, June 27–28.

Since 1977 I have had occasion to appreciate the crucial role played by foundations in American society. During that time I have served nonprofit organizations as a project director, a trustee and a director of development. Let me cite three examples of foundation-funded projects.

Training college students for revitalization of agriculture in New England.—With three successive grants totaling approximately $45,000 the Jessie Smith Noyes Foundation of New York City enabled Education Development Center, Newton, MA, to provide stipended summer internships for 30 college and graduate students. These interns provided fulltime service to state departments of agriculture, farmers' markets, food cooperatives, urban gardeners and research stations, all of which are working to reduce New England's dependence upon external sources for 85% of its food. The outcome was to help create and sustain the region's capacity for small-scale diversified agriculture.

Providing information on critical social issues via radio, and television.—With a grant of $20,000 from the Field Foundation in New York, Cambridge Forum was enabled to videotape a two-day symposium held last weekend at Harvard University. That forum featured the six authors of "Living with Nuclear Weapons", a just-published book designed to serve as a primer for the public on questions of nuclear policy and international security. The Field grant, plus contributions from individuals, enabled Cambridge Forum to secure top-flight technical resources for the taping and the subsequent editing into programs for public television. The outcome will be to encourage responsible public participation in national policymaking.

Providing resources to initiate demonstration enterprises.—A grant of $10,400 from the Public Welfare Foundation, Washington, D.C., pemitted the Rural Education Center, Inc., Wilton, N.H. to secure stock and horticultural assistance for establishing an orchard and beds of raspberries and blueberries. The fruits from these plantings will be used to provide flavoring for very high-quality yogurt, which is being produced at the Center (a working farm) as a demonstration enterprise for New England farmers. The outcome will be to encourage on-farm production of diversified native products as a means to strengthen regional agriculture.

These cases demonstrate how foundations judiciously provide the means for economic revitalization, for support of the democratic process, and for encouragement of local initiative. Without the help from foundations, the projects that I have mentioned above would not have occurred.

In my opinion it is of paramount importance that private foundations be recognized and assisted for the essential role that they play in American life.

Sincerely,

V. POWELL WOODWARD, *Director of Development.*

CITY OF CAMDEN,
OFFICE OF THE MAYOR,
Camden, N.J., June 7, 1983.

Hon. CHARLES B. RANGEL,
Committee on Ways and Means,
Washington, D.C.

DEAR CONGRESSMAN RANGEL: I have been informed a subcommittee, of which you are chairman, will conduct hearings on private foundations on June 27 and 28.

I am not familiar with the specific legislation being proposed, but I am told the hearings will concern the philharmonic activities of private foundations and the value of their charitable contributions.

I would like to inform you of one specific example of a private foundation which has been of great assistance to the City of Camden and its citizens.

The Gannett Foundation, through its Community Priorities Program, provided a $40,000 grant to the City of Camden which allowed us to implement our Urban Park Ranger Program this year, which trained and used mostly minority high school seniors to patrol our parks and recreational areas to reduce the incidence of vandalism within those areas. The benefits to the city and its citizens are many and include helping to reduce unemployment among our youth and preparing them for future openings within our police and fire departments.

If I can provide any further information on the Gannett Foundation grants I will be glad to do so.

The writer would like this letter to be made a part of the hearings.

Sincerely,

Melvin R. Primas,
Mayor of city of Camden.

Cascade General Hospital,
Leavenworth, Wash., June 18, 1983.

Re A. Z. Wells Foundation.

Hon. Charles B. Rangel,
Chairman, Subcommittee on Oversight,
Committee on Ways and Means, Washington, D.C.

Dear Sir: This letter is to support the Trustee and the management of the A. Z. Wells Foundation in that the sale or distribution of Foundation stock, presently required by existing law, would be detrimental to its many charitable beneficiaries.

This non-profit hospital started in 1970 and has received a share of the Trust's revenues each year since to the benefit of people in this hospital district's community. Their donation, by far the largest received, has always been used to buy urgently needed equipment. For example, this year the Wells donation of $12,000.00 was applied to the replacement of a cardiac heart monitoring system which cost approximately $20,000.00. Loss of these shared donations would be very detrimental to the hospital.

We feel that this charitable foundation, which is unique in North Central Washington, has been operated satisfactorily and should be allowed to continue operating as its founder, Alfred Z. Wells, in 1949 intended and that other such grantors in general should be allowed to set up similar "endowment" type trusts that could remain in perpetuity if operated properly.

Sincerely,

Don H. McWhirter, *Administrator.*

Catholic Charities of the Archdiocese of
St. Paul and Minneapolis,
Minneapolis, Minn., June 13, 1983.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: As Bishop of the Archdiocese of Saint Paul and Minneapolis I have a vested interest in charitable giving in this area. Hence, I am writing to you as the House of Representatives prepare for hearings on foundations at the end of June.

Human service agencies, such as Catholic Charities, have traditionally responded to the emergency needs of the poor in our community through provision of meals, clothing, and shelter. Unfortunately, reductions in public funding have seriously hampered our ability to meet the needs of growing numbers of individuals and families requiring emergency assistance. For example, in Ramsey County there are twice as many people using emergency foodshelves compared to last year. This gap between the basic needs of the poor and society's ability to respond is a crisis in services faced by many communities.

In the Saint Paul area, a consortium of public and private organizations have cooperatively addressed this problem by initiating the Emergency Care Fund in 1982. Foundation support has been essential to its establishment and operation. Specifically, The Saint Paul Foundation is administering the Fund. I believe the Emergency Care Fund is an innovative, but effective response to a significant social issue. Foundation Leadership helped to galvinize the relationships of cooperation among the business, government, and non profit organizations involved. I commend their efforts to you.

Sincerely,

Monsignor J. Jerome Boxleitner.

CENIKOR FOUNDATION,
June 16, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing this letter in reference to the Oversight Subcommittee hearings on private foundations, to be held on June 27 and 28, 1983. I understand that these hearings are to inform and educate the Congress on the activities and roles of private foundations, along with other private sector contributors.

As you may know, President Ronald Reagan visited the Cenikor Foundation on April 29, 1983, to praise the accomplishments of this highly successful drug and alcohol rehabilitation program. The President's comments and the thrust of his speech to Cenikor residents was not directed at the clinical approach as much as Cenikor's unique way of funding itself.

Approximately 50 percent of Cenikor's operating budget, which supports 400 full-time residents, is generated through its own income-producing industries. The remaining 50 percent comes from donations from private individuals, corporations and, in the large part, from private foundations.

Cenikor receives no grants or money from any government or United Way agency. The private sector contribution to the Cenikor program is one of the most important factors that adds to the success of this organization. Traditionally, the strings attached to government funds become so burdensome that one soon loses the ability to operate effectively.

There are several areas within the Cenikor Foundation that have been made possible by private foundation grants. Cenikor's child care operations in Denver, Ft. Worth and Houston would not have been funded without the aid of such foundations as the Denver Foundation, the Swan Foundation, Union Pacific Foundation and the Cameron Foundation, respectively. Many capital projects have been made possible by private foundations, such as the Ruth & Vernon Taylor Foundation, the Gates Foundation, the Hillcrest Foundation, the Hoblitzelle Foundation, the W. S. Farish Fund, the Brown Foundation and, again, the Union Pacific Foundation. These capital projects totalled several hundred thousand dollars to renovate and build facilities for drug and alcohol rehabilitation.

In order to begin a new program or to start a facility in a geographical area that has not experienced facilities similar to Cenikor's, it is difficult to find seed money because of the non-traditional approach that Cenikor uses, namely, non-government funded. Our largest facility, which is located in Ft. Worth, Texas, was contributed to us by the Winn-Dixie Corporation of Florida and for three years was funded almost exclusively by the Sid Richardson Foundation. The Richardson Foundation encouraged establishment of the Cenikor program in the Dallas/Ft. Worth metroplex and was instrumental in establishing our organization, both financially and with credibility. Without their assistance, and many other contributions from the private sector, that facility would not exist today.

Since the Ft. Worth facility's inception, it has broadened its base of support and receives contributions from many other foundations, including the Mabee Foundation, the Exxon U.S.A. Foundation, the Davidson Family Foundation, the O'Donnell Foundation, the Florence Foundation and the Hawn Foundation, along with many more.

Seed money was provided for Houston's operations by the Fondren Foundation, the M. D. Anderson Foundation, the Atlantic Richfield Foundation, Shell Companies Foundation, the West Foundation, the Owsley Foundation, the Nalco Foundation and many others. Many of these private foundations continue to support Cenikor's efforts and to help in its ever-increasing need to serve a growing community.

There are still other ways in which organizations mutually benefit from grants provided by private foundations. A recent example would be a grant from the Fondren Foundation of Houston to a non-profit organization called Public Films, Inc. This non-profit organization exclusively produces films and Public Service Announcements for other non-profits. Through the Fondren grant, this organization not only received seen money, but was able to produce Public Service Announcements for television for over ten local non-profit organizations, including a slide presentation for Cenikor. This type of unique funding is something that can be done only by private organizations that can be creative and adaptive in their methods of distributing funds.

Cenikor attributes its existence and its highly succesful record to the dedication of its staff and its supporters. Many of the foundations that I have mentioned in this letter have sensitive and caring individuals who determine how and where their funds are to be distributed. Private foundations have played an important part in the lives of the men, women and children of Cenikor and in the communities in Texas and Colorado where we are directly located. I would enourage the members of your Subcommittee to support wholly the efforts addressed by these foundations to help organizations such as Cenikor.

If you need any additional information, I am available to you anytime.

Sincerely yours,

KENNETH L. BARUN, Ph. D.,
President.

CENTER FOR FAMILY LIFE IN SUNSET PARK,
Brooklyn, N.Y., June 15, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: We would greatly appreciate your submitting for the official part of the hearing record of the Oversight Subcommittee of the House Ways and Means Committee, the following urgent comments:

The role of private foundations in the provision of personal social services to children and families has been, in our experience, a most critical and strategic one. While several foundations directly known and helpful to us could be cited for their decisive influences and help, we would like to give the example of the Foundation for Child Development in New York City, the New York Community Trust, the Edwin Gould Foundation for Children and the Robert Sterling Clark Foundation. Each of these foundations has come to the aid of organizations providing early childhood, developmental services for children and families, and program development in a large number of areas impacting on families.

These foundations have been outstanding also in their concern for quality of services to children, youth and families, helping to define accountability in both public and private sectors for how help is given, and contributing significantly to deinstitutionalization and progressive methods.

Their contributions are often of a catalyst quality, bringing in other volunteer and private sector help. For example, a grant by the Foundation for Child Development to this Center has enabled it to train a graduate student unit of social workers from the Columbia University School of Social Work and Hunter College School of Social Work. A small grant from the New York Community Trust enabled us to launch an emergency food program which is strictly a contributory effort by community groups and churches and now serves the Sunset Park neighborhood of Brooklyn.

When our employment services program suffered a lapse of funding and cash flow for some five months as CETA was being phased out, foundations came to our help unitl we were on our feet again.

The Center for Family Life is considered a model of interorganizational, community-based effort as well as direct personal social services impacting on families and children in a neighborhood which nearly succumbed to blight. We owe our successes in a very, very great measure to the start-up and sustaining helps of private foundations, and commend to Congress their recognition of the unusual roles they play.

Sincerely,

SISTER MARY PAUL, DSW,
Director of Clinical Services.

CHART,
Minneapolis, Minn., June 20, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing to support and commend the role of private and corporate foundations in American society. I am Executive Director of a private nonprofit organization, Chart, which was established six years ago to address the needs of women to achieve economic self-sufficiency. Since 1977, Chart has worked with over 5,000 women. Currently, 70 percent of our client population are single heads of household, and are generally at the poverty level. In recent months over 50 percent of our clients have been unemployed.

Chart was established with seed money from the Dayton Hudson Foundation in 1977. A grant of $60,000 was made, payable over a three year period: $30,000 in 1977, $20,000 in 1978, and $10,000 in 1979. This money was contributed with the expectation that underserved and minority women would be recipients of the career and employment services which Chart offered. Dayton Hudson was careful to monitor these efforts and to maintain its commitment to these populations. Since those early years they have maintained this commitment and have designated $25,000 per year to Chart/Sabathani, a program located in South Minneapolis. The profile of a "typical" Chart/Sabathani client in 1982 was: a minority woman, unemployed, between 16 and 25 years of age, single, little or no education beyond high school. Through the Dayton Hudson Foundation's major grant and minor grants from companies such as Honeywell, in 1982, Chart was able to work with 420 clients in one to one counseling sessions which included resume writing, issues related to employment, job referrals, and job leads. Another 53 women participated in nine job seminars which presented issues relevant to minority and low-income women. These services would not have been possible without the funds received from Dayton Hudson as our primary funder and from other foundations. In 1983, General Mills has supplemented the Dayton Hudson grant by contributing money for an additional half-time salary and benefits.

General Mills is another example of a corporation whose foundation has played a tremendous role in the community and has been instrumental in providing support to Chart in innovative ways. Like the Dayton Hudson Foundation, they did not simply continue to provide operating support and consider their corporate responsibility completed. They continued to support Chart but chose to support a program of business internships which were developed to help re-entry women refresh skills and acquire new ones in order to re-enter the job market. Interships were developed in Twin Cities corporations which provided challenging work opportunities and valuable experience. General Mills contributed $10,000 in 1980, $20,000 in 1981, and $25,000 in 1982 to this program which was subsequently renamed Chart Careers. It has received national attention as a model program. It is now generating its own income and no longer requires outside support. In 1983, Chart asked General Mills to fund a total marketing program for Chart which would help us develop a marketing strategy and target our markets, therefore, helping ourselves to develop regenerative income. General Mills responded by contributing $30,000 to this project, thus allowing us to hire a full time marketing specialist and to develop necessary brochures and other marketing tools.

A broad spectrum of Twin Cities corporations and private foundations support Chart and dozens of other worthwhile organizations. This support is extremely necessary for us, since we serve a population which is poor. Chart provides scholarships and a sliding fee scale to 45 percent of our clients. The remaining clients need three months to pay the costs. Chart could not survive nor help these women without the contributions from community foundations and corporate philanthropy.

I am writing specifically out of the experience gained through six years of guiding a nonprofit corporation. I commend the work done by the corporate and private foundations in the Twin Cities area. There is no question that these foundations are run out of a strong sense of responsibility to the community. There are 107 Minnesota companies who belong either to the 5 Percent Club or the 2 Percent Club. These companies donate the given percentage of their domestic pretax income to charitable and community support. Their corporate consciences are absolutely nesessary to the survival of programs which aid the poor, the disenfranchised, the unemployed, and all others in our society who need the care and concern of their communities.

Thank you for the opportunity to write to you.

Sincerely,

MARION G. ETZWILER, *Executive Director.*

CITY OF CHICAGO,
CHICAGO COUNCIL ON FINE ARTS,
Chicago, Ill., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: This regards the hearings on private foundations to be held by the Oversight Subcommittee of the House Ways & Means Committee.

I am taking this opportunity to tell you my views on the role of private foundation funding for the arts in our area and on the special role a particular foundation has played within our own agency and the Chicago arts community. I would like for my statement to be made an official part of the hearing record.

In 1980, private foundations in Illinois, including corporate, independent, and family foundations, contributed $12,681,344 to the support of cultural activities, of which some $9,891,448 remained within Illinois. In that same year, the Chicago Council on Fine Arts granted only $250,000 to Chicago area artists and arts organizations. I am sure that these figures speak for themselves with regard to the importance of private foundation funding to the cultural life in our community.

The Chicago Council on Fine Arts has recently doubled the amount of money that we regrant to small, community-based arts organizations. This large increase to $454,258 has come about because of a partnership that was developed with our local community foundation, the Chicago Community Trust, and the National Endowment for the Arts. This federal, local, and private match was possible only because of the leverage that one sector was able to put upon the other in order to secure a commitment for the necessary funds, which were targeted for a constituency particularly hard hit by today's economic realities—small, community-based arts organizations with budgets under $250,000.

We consider these small organizations to be crucial to the arts life in our city. It is here that artists get their start and earliest encouragement and renumeration. The program that our partnership has developed, called City Arts, is important because it provides the "venture capital" for the arts in our city. Without the participation of the Chicago Community Trust, our private foundation partner, it is doubtful that we would have been able to secure a commitment of funds from the federal government for this project, and our commitment of funds from City Hall may also have been in jeopardy. Because of the leverage that the partnership concept gave us, the program was able to occur, was extremely successful, and is being used as a model by the President's Committee on the Arts and Humanities.

We attribute a large part of its success to our private partner, the Chicago Community Trust. The program was developed with the help of their talented and creative staff, and its ultimate success was aided by the enthusiastic support of its Trustees, who are some of Chicago's most prominent and community-minded citizens. This involvement of private citizens in planning for the long-range life of the arts in our city helps ensure a future for the arts here, and is perhaps, the most significant aspect of private sector participation. The efforts of private foundations are unique, and the Chicago Council on Fine Arts strongly advocates their continuance.

Sincerely,

MARIE CUMMINGS, *Executive Director.*

THE CHILDREN'S AID SOCIETY,
New York, N.Y., June 20, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: For an inclusion in the official record for the Oversight Subcommittee of the House Ways and Means Committee Hearing on private foundations, scheduled for June 27-28, 1983, I am writing to you to indicate the pivotal role which private foundations assume in funding The Children's Aid Society's broad range of services, in seeding the development and piloting of new services and in support of the construction and renovation of our ten major service facilities.

The Children's Aid Society, founded 130 years ago, is a voluntary, non-sectarian agency serving 100,000 of New York City's needy children and their families yearly through a network of services, including: neighborhood centers, camps, mental health, foster care, medical and dental services, education and recreational programs. The priority of services has always been on prevention, where possible, and on remediation, where necessary. In more recent years, the Society's major accomplishments have been the development and service delivery of the following: PINS Mediation Program; Family Life Resource Center; Project LIVE (Learning Through Industry Volunteer Education); Child Abuse Prevention Training Program; Teen Pregnancy Prevention Training Program; Adolescent Health Program; Teen Alcoholism Prevention Program; Foster Care Placement Prevention Program; and Emergency Feeding Program.

Private foundation support has been crucial both to the development of these new programs and to sustaining the agency's core services. Private foundation giving during the last fiscal year of the Society was 38 percent of the total direct public support raised for operating purposes.

The following new services have been funded to the indicated degree by private foundations; none would be possible without this generosity and the continuing interest of the foundation community:

PINS Mediation Program—50 percent of operating costs received and pledged from foundations in match of government funding. Robert Sterling Clark Foundation, $40,000; Foundation for Child Development, $60,000; New York Community Trust, $40,000.

Adolescent Health Education Program—50 percent of three-year operating costs received and pledged from one foundation. Neil A. McConnell Foundation, $150,000 over three years.

Emergency Feeding Program—100 percent funded by private foundations. The Clark Foundation, $10,000; J.M. Kaplan Fund, $5,000; Anonymous Foundation, $55,000; and Hearst Foundation $15,000.

Work Readiness Program—65 percent of first year costs funded by foundations. Achelis Foundation, $5,000; Bodman Foundation, $20,000; and Louis Calder Foundation, $12,500.

Teen Employment Program—58 percent of cost funded by foundations. Achelis Foundation, $20,000; Bodman Foundation, $40,000; and Calder Foundation, $12,500.

Foster Care Placement Prevention Program—25 percent of first year cost funded by foundations. Joe & Emily Lowe Foundation, $10,000; Roche Relief Foundation, $2,000; and Cleveland E. Dodge Foundation, $10,000.

The Society's Board of Trustees and Administrative Staff are concerned that the support role of foundations be facilitated and furthered under law through the Oversight Committee's hearings. We trust that will be the result of the Committee's deliberations.

Sincerely

PHILIP COLTOFF, *Executive Director.*

CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK INC.,
New York, N.Y., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing in connection with your Committee's hearings on private foundations. Since neither I nor others in our organization will be appearing at the hearings, we would very much appreciate the inclusion of this letter in the hearing record.

In our long career in community affairs in behalf of children, we have found the private foundation to be a critically important invention of our pluralistic society. It makes possible new knowledge, new initiatives where none would otherwise be. All of this comes at little cost to society, and the returns are very substantial.

Citizens' Committee for Children is a citizen watchdog on how governmental services and voluntary organizations conduct programs for children and their families, at what cost, with what effectiveness. We do not, as a rule, accept public monies in order to maintain independence and objectivity. Our members volunteer much time, but financial support is necessary for employment of staff assistance.

By way of example of the contributions made by foundations to our recent work, we offer the following:

(1) In recent years, public administrations have begun using computer technology to gather and analyze great reserves of information. They can control the use of that information by what they collect and what they disclose. With the support of the Foundation for Child Development, the Edna McConnell Clark Foundation and the Robert Sterling Clark Foundation, and with an annual budget of $80,000, we, a private group, can obtain the data and undertake our own analyses of who is being served, how, with what accomplishment and at what cost. These analyses can be made available to you in the legislative branch, to the media, to the public administrations themselves, for a new perspective on how things are going.

(2) Field Foundation and the Florence V. Burden Foundation, each with a one year grant of $30,000, gave us the wherewithal to examine the organization and performance of probation services for children here in New York. The material assembled is now being used by the city and state to make a number of changes in the administration of this service. Despite all the concern about juvenile crime, no proper attention was paid to this important service until we could focus public attention with our spotlight. This was possible only with the financial help from foundations.

(3) Little is known about how children in foster care are prepared for 'aging-out' into adult independent living. This group, handicapped by circumstances, especially need help to prevent life-long dependency. We are now conducting a study in this subject which should be most helpful to the governmental and charitable groups working with these children. The support comes from the New York Community Trust with a $50,000 grant.

In these undertakings by citizens to help their government and community to do better by children, the foundations have played a necessary part. They command that margin of our resources for venture capital for study, for new knowledge, for evaluation of how we are doing, for the use of new information that could not be available otherwise. The foundations provide the possibility of creative refreshment through exploration of new ideas, through freedom to innovate to meet ever changing conditions.

Foundations have made possible much of our work, but more than that, they have contributed significantly to the strength and adaptability of American society.

Respectfully yours,

BERNARD C. FISHER, *Executive Director.*

CITIZENS' SCHOLARSHIP FOUNDATION OF AMERICA,
Manchester, N.H., June 23, 1983.

JOHN J. SALMON, Esq.,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: As President of Citizens' Scholarship Foundation of America, a national nonprofit, publicly supported scholarship service organization, I respectfully request that this testimony relative to Revenue Procedure 76-47 be entered into the printed record of the Committee on Ways and Means Hearings on Private Foundations.

Citizens' Scholarship Foundation of America currently assists eighty five companies and foundations throughout the United States with the distribution of scholarship funds. Selection procedures employed by CSFA are voluntarily on file with Internal Revenue Service. Selection of recipients is made on the basis of academic record, leadership qualities, unusual family circumstances, student aspirations, outside appraisals, and in the majority of cases, financial need.

Revenue Procedure 76-47 imposes, for one class of scholarship sponsors, an additional and arbitrary selection standard that is completely unrelated to the qualification of students or to reasonable management of scholarship programs. Private foundations which are employer related and provide scholarships for children of company employees are restricted by a 25 percent Rule which says, in principle, that three eligible candidates who apply for assistance must be rejected for every candidate who is designated a recipient. The intent of this rule (and its completely unworkable 10 percent alternative) is to ensure that scholarships may not be used as inducements for employment or as part of an employee related entitlement or benefit program.

Two current, and not atypical, situations within our 1983 scholarship program client group, underscore the absurdity of this restriction.

In the first, a large California based bank with 14,000 employees wished to distribute from its related private foundation $100,000 in grants ranging from $500 to $2,000. Applicants for the program totaled 184, thereby permitting CSFA (as the disinterested third party) to grant only 46 awards totaling $70,200. Thus the intentions of the foundation were diluted by nearly 30 percent. The total number of applicants represents just over 1 percent of the employee base; the number of recipients 0.03 percent. If the foundation had been able to distribute the intended sum, 70 recipients or still only 38 percent of the applicants or 0.05 percent of the employee group would have benefited from the program.

In the second situation a western Massachusetts printing and production firm of 400 employees would like to provide $15,000 in scholarship aid to children of employees, funded again through an intermediary private foundation. A meeting called of first shift employees with children of college age found fourteen parents (twelve of these piece work or production employees) interested in having their children enter the competition. Should fourteen students enter the competition, only three will receive scholarship assistance. Eleven will be denied assistance because of the 25 percent Rule, regardless of their accomplishment and potential.

CSFA believes that the required use by the same Revenue Procedure of an outside disinterested third party (Rule 2), together with the provisions of Section 117 of the

IRS Code, precludes the use of any arbitrary percentage formula in determining the number of awards that may be made in a legitimate scholarship competition. The additional six rules imposed by Revenue Procedure 76-47 effectively prohibit any company related private foundation from using a scholarship program in a self-serving manner.

CSFA would prefer that the percentage rule be dropped altogher so that applicants to such scholarship programs may be judged on their merits. If the percentage test cannot be discarded, then reason would suggest that a 35 percent test would be a more realistic and less arbitrary standard.

Respectfully submitted,

JOSEPH F. PHELAN, *President.*

SAMUEL L. CLEMENS PERFORMING ARTS
AND COMMUNITY CENTER,
Elmira, N.Y., June 18, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: Chemung County Performing Arts, Inc., aka The Samuel L. Clemens Performing Arts and Community Center, wishes to submit information to the Oversight Subcommittee of the House Ways and Means Committee regarding the role of private foundations as they relate to this organization. We desire that this information be made an official part of the hearing record, slated for June 27-28.

Their critical role must first be seen in the light of the historical background of this facility.

Briefly: The Samuel L. Clemens Performing Arts and Community Center officially opened in 1977. Though this organization is young and still growing, the history of the building dates back to 1925, when it was called the Keeney Theatre and served as a vaudeville house. Eventually the theatre was sold to Warner Brothers and unfortunately during their 22 year ownership of the theatre, the facility began to deteriorate and fell into disrepair. In 1952, J. P. Dipson purchased the theatre and changed the name to the Elmira Theatre.

In 1972, the major disaster "Hurricane Agnes" struck the Northeast and damaged a major portion of Elmira including the theatre, putting it under eight feet of water. Part of the redevelopment plan of the city was to construct a new arterial highway that called for the demolition of the entire theatre.

A group of concerned citizens facilitated a feasibility study which showed that operating a performing arts center in Elmira was viable and that the Elmira Theatre Building could be used for this purpose. This group—Chemung County Performing Arts, Inc.—had until April 30, 1976 to raise the needed capital to renovate the theatre.

Armed with this report, the Committee went to work to raise the needed $650,000. The Gannett Foundation pledged $200,000 in stock as a matching grant. The Tripp Foundation pledged $50,000. The Lindau Foundation granted $10,000, and Westinghouse granted $10,000. The Anderson-Evans Foundation gave a donation of $100,000, followed by the Corning Glass Works Foundation grant of $50,000. The rest of the monies were raised through individual contributions and Chemung County support.

The Clemens Center thrives in a town of less than 40,000 people and a county of less than 100,000 people. The fact that it exists is a miracle, one that absolutely would not have happened without the investment of private foundations.

The roof of the Clemens Center was not replaced at the time of the original restoration in the mid-1970's. By 1981, there were significant problems. In the winter of 1981, the Anderson-Evans Foundation donated close to $40,000 for repair of a roof that dated back to 1925.

In 1982, the Aetna Life and Casualty Foundation pledged a Challenge Grant in the amount of $6,000 toward installation of the infra-red listening system for the hearing impaired. This gift was to ensure that that people with hearing disabilities could fully appreciate and participate in the joy of the live performing arts. This grant was partially matched by a $2,000 donation from the Tripp Foundation. In the Spring of 1983, this system was fully operable for our patrons.

At this writing, major renovations are going on at the Clemens Center to bring it inot compliance with public safety codes. The Anderson Foundation has committed $50,000 to this project, which will be concluded by late August, 1983.

The Lindau Foundation has pledged $13,000 for stagehouse renovations and further improvement of safety factors in this 1920's vintage theatre.

This past year, both the Hilliard Foundation and Lindau Foundation contributed monies toward installation of an Apple Computer and a Xerox copier.

Nearly all foundations named above also contribute annually to operational costs of the Clemens Center, which are in the neighborhood of $700,000. In this fiscal year, which will conclude on August 31, they will have contributed $75,000 toward operations. This also includes a $10,000 contribution from the Wurtele Foundation, not listed above.

Future needs of the Clemens Center currently under review by some foundations include replacement of an antiquated heating system, dressing room renovation, reconstruction of the loading dock area, etc. . . .

The Samuel L. Clemens Performing Arts and Community Center serves 90,000–100,000 people annually. It is the only performing arts facility in a 7-county area that includes the Twin Tiers of Southern New York State and Northern Pennsylvania. It contributes to the quality of life, is used as a recruitment vehicle to attract talented invdividuals and businesses to an essentially rural environment, is a great purchaser of local goods and services, and stimulates the area's economy through our audiences' patronage of local business.

It is the private foundations who are, in essence, the "foundation" of this effort.

Sincerely,

PATRICIA L. POWERS, *Board Chairman.*

CITY OF CLEVELAND,
Cleveland, Ohio, June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: It is my understanding that the Oversight Subcommittee of the House Ways and Means Committee has scheduled two days of hearings on the role and implications of private foundations in America. While I am unable to attend the meeting, I would respectfully request that this letter be included as an official part of the record.

Cleveland has been blessed by its Foundations. It is due to their active and personal involvement in the problems of this City that a number of longstanding problems have been addressed and in some cases resolved. A good understanding of the role played by the independent sector can be found in a recently released report from the United States Conference of Mayors, entitled "Hunger in American Cities." The report states:

"From 1978 to 1982 emergency food requests in Cleveland increased by 219 percent . . . (M)ost of these people have received assistance, largely through efforts undertaken by the Cuyahoga Emergency Funders Group (which) includes representatives of major corporations, private foundations, religious groups, and city and county governments. CEFG members donated $1.2 million for emergency housing and food . . .

Because of the tremendous local efforts that have been made in Cleveland to draw all sectors of the community together to respond to the problem of hunger, primarily through the CEFG, local officials feel that currently they are meeting the demand." (pp. 9-11)

Most of the $1.2 million derived from our local Foundations. Without their financial commitment there would have been no possibility of meeting the upsurge of people requiring food and shelter. The City and County governments, faced with decreased revenue because of the current poor economy, was—and is—unable to deal with these needs without outside help.

On the other end of the spectrum, the private and corporate Foundations have financed, in part, the high technology evolution of City government. For example, the Cleveland Foundation awarded a grant of over $300,000 to develop a sophisticated computer system for the Cleveland Police Department. The "Integrated Police System" will produce a computer aid dispatch system, an on line booking program, and a geographic base file which will be immensely helpful in police work. The same Foundation recently awarded a new grant to develop a similar system for the Fire Department and for the City ambulance service.

The SOHIO Foundation awarded the City approximately $180,000 to develop a program for energy savings in municipal buildings.

The Cleveland Foundation, the Gund Foundation and many corporations donated over $500,000 at the beginning of my administration in order to perform a comprehensive analysis of the effectiveness and efficiency of City government.

The purpose of this brief list is not simply to note that Foundations have been of financial aid to City government. Rather, the point to be remembered is that the various Foundations have acted as a catalyst to bring people together to resolve problems. They have often played leadership roles in identifying community needs, evaluating those needs and "priming the pump" with sufficient funds to insure action. From human service programs, through housing development, to better government, Foundation are a major strand in the fabric of this City.

If you have additional questions, kindly contact me at your convenience.

GEORGE V. VOINOVICH, *Mayor.*

CLEVELAND STATE UNIVERSITY,
COLLEGE OF URBAN AFFAIRS,
CLEVELAND CENTER FOR NEIGHBORHOOD DEVELOPMENT,
Cleveland, Ohio, June 16, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I understand the Oversight Subcommittee of the House of Ways and Means Committee is holding hearings on private foundations later this month. It might be useful to the Subcommittee to have a few examples of how the support of two Cleveland-based foundations, the George Gund Foundation, a private foundation, and the Cleveland Foundation, a community foundation, has contributed to the success of various neighborhood self-help programs here in Cleveland. A brief review of such programs would include the following:

A demonstration program which is underway in five Cleveland neighborhoods (Glenville, Tremont, St. Clair, Broadway and Detroit-Shoreway) to test the theory that neighborhood-based organizations (NBO's and their block clubs can be more effective in residential energy conservation than more traditional institutions. In the program's first year, support was sought and obtained from the Ford, George Gund and Cleveland Foundations, the City of Cleveland, East Ohio Gas Company, Cleveland State University, and Central National Bank. The Cleveland Foundation contributed $25,000 for each of the program's three years to enable the NBO's to hire neighborhood-based energy coordinators and actually "sell" the program in the neighborhoods. In its first year, the program resulted in 148 energy audits, 75 loans for insulation and weatherization and 20 weatherization grants to very low-income homeowners. We expect to double these figures in the second year. This demonstration has led to four new local programs, and is now being discussed as a model for a state-wide initiative in energy conservation.

The George Gund Foundation provided support for a number of Cleveland nonprofit housing organizations threatened with extinction by recent federal budget cuts—particularly the loss of HUD's Self-Help Development grants. The threatened groups not only survived but seven of them have formed the Cleveland Housing Network which is now rehabilitating an average of 60 houses per year. The Network has successfully attracted support from the City, local banks and Cleveland's Local Initiatives Support Corporation. It is now negotiating a 97-unit package of housing under HUD's Section 8, Moderate Rehab Program, and is also exploring a joint venture with Standard Oil of Ohio designed to double its low-income housing production. The joint housing venture will use special low-income housing tax incentives provided under Section 167(k) of the IRS Code and the Accelerated Cost Recovery System of ERTA, 1981. The proposal is expected to have national implications.

Cleveland's Hough area has lost about half its 1950 population and virtually all its retail commercial activity in the last two decades. Older citizens still living in the neighborhood are especially disadvantaged by the decline since they now have to travel long distance to get a bottle of aspirin. With the help of a small grant from the George Gund Foundation and assistance from the Cleveland Center for Neighborhood Development at CSU and Central National Bank, the Hough Senior Citizen Coalition has recently completed a retail marketing study. The results of the detailed survey plus income and population data from CSU's Urban Center will be used to influence the Revco drugstore chain to locate a store in the needy Hough area.

A grant of $30,000 from the Gund Foundation aided Cleveland's St. Clair Superior Coalition to set up the Cleveland Recycling Center, a neighborhood business which recycles paper, cardboard, glass and aluminum. In the process, the appearance of the neighborhood is improved while hoped-for surplues at the Recycling Center will flow back to the parent coalition to support its efforts for better housing and more jobs in the neighborhood.

In every one of the four brief examples cited above, grants from foundations have leveraged additional support from many institutions, helped blunt the impact of federal budget cuts and have made possible local successes that were simply not achievable without such support. Indeed, the last few years have provided considerable evidence that NBO's and their subsidiaries, aided by judicious support from foundations and other sources, can achieve remarkable success through creative self-help. This fact is of central importance to the encouragement of an urban renaissance in Cleveland in the 1980's. Create an environment where citizen leadership can flourish at the grass-roots level, where more resources from foundations and other sources can be creatively employed under the control of people who live in the neighborhoods, where the barriers posed by thoughtless public and private edicts have been swept away, and many of the seemingly intractable problems of our city's neighborhoods may well begin to shrink to more manageable proportions.

I hope the Oversight Committee finds these comments useful. I would appreciate their becoming an official part of the hearing record.

Very truly yours,

NORMAN KRUMHOLZ, *Director.*

CLEVELAND TOMORROW,
Cleveland, Ohio, June 15, 1983.

MR. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: The purpose of this letter is to express our strong support for the special role of private foundations in this nation. I would also ask that you please make this letter an official part of the hearing record.

I am President of Cleveland Tomorrow, a committee of 38 chief executive officers representing Greater Cleveland's business leadership. This committee was organized a year ago to pursue a number of programs to help revitalize our region's economy (Exhibit 1 summarizes the programs and lists the members of Cleveland Tomorrow). Cleveland Tomorrow represents a dramatic departure from the historical organization and behavior of Cleveland's business community. After only one year of operation we have created an organization where chief executive officers participate on a regular basis in the creation and implementation of fundamental initiatives addressing the community's most pressing economic problems.

Our existence and the quality of our operation rests largely on the role played by The George Gund Foundation in supporting an 18-month study that recommended and led to the formation of Cleveland Tomorrow.

In the spring of 1980, a small group of Cleveland business leaders approached the Gund Foundation to support them in a study to identify specific ways to stem the economic decline of the region. No one could have anticipated the outcome of the effort and, at the outset, everyone involved agreed that the effort was both high-risk and quite uncertain. Over an 18-month period, the Gund Foundation contributed over $800,000 to support the committee and their consultant, McKinsey & Company, Inc., an international management consulting firm. Without that funding, I am confident that we would not have been able to achieve the kind of program we are executing today. This is true for several reasons:

Objectivity—Foundation support was free of "organizational baggage". Because the Committee was totally independent of organizational sponsors, e.g., the City or the Chamber of Commerce, they were able to operate with a greater degree of objectivity and freedom. Stating that the work was conducted under a foundation grant opened many doors of the community to frank conversation and investigation. Recommendations could be developed that served the best interests of the community rather than any specific stakeholder supporting the study.

Adequate resources—Without Foundation support our community could not have afforded to invest $800,000 and 18 months (approximately five man-years of staff time) in a comprehensive study and implementation effort. This represented a tremendous investment by the Foundation in knowledge building. Cleveland Tomorrow's ability to clearly articulate the key problems facing the region, to investigate and screen the best programs of other communities and to understand the detailed organizational dynamics of the Cleveland community rests largely on the fact that we had the resources to study and learn these things, unburdened by the constraints of an insufficient budget to complete a particular investigation.

Attitude toward risk—Given the amount of money required to undertake a truly fundamental study and the uncertainty that the initiative would lead to something significant, I can think of no other entity that would have been willing to take such a risk. Private foundations seem to be uniquely prepared to take risks on the chance that a new mechanism or program can be developed to better the health of the community. Lest it appear that the Gund Foundation was making an imprudent investment in such an uncertain undertaking, it should be noted that the Foundation was willing to bet on the reputation and commitment of the right business leaders, the quality of the consultant hired and actually made four grants over the course of the effort as products and results were produced.

Now that we are organized, the foundations remain a critical resource for the continued growth and evolution of our organization. While Cleveland Tomorrow's direct costs are paid out of corporate contributions, in many situations we have turned to foundations for key program start-up support—support vital to Cleveland Tomorrow's continuing effectiveness. Since the creation of Cleveland Tomorrow, local foundations (the Cleveland Foundation and the Gund Foundation) have provided support to three of our programs—the Work In Northeast Ohio Council, the Center For Venture Development and the Advanced Integrated Manufacturing Technology Program. In all of these situations foundation support filled a key role:

Collaboration between different institutions—By their method of operation and commitment of funds, the foundations helped us involve other groups as a requirement of receiving foundation support. This helped us broaden our base and, at the same time, helped us leverage additional sources of funds.

Assurance of a financially secure start-up period—The willingness of local foundations to make multi-year commitments enabled each program to devote itself to providing its intended service rather than use scarce staff time to pursue fund-raising activities. The multi-year grants enabled each program to attract high quality staff, confident that the program would be around long enough to provide a real employment opportunity. This start-up period will give each program time to develop a strong performance record capable of attracting a stable continuing source of funding.

Willingness to experiment—Foundation support has provided the community with the resources to develop experiments to address critical programs, often too uncertain or risky to rely fully on regular customers, government or business support at their inception.

In my mind, the Cleveland Tomorrow Project funded by the Gund Foundation represents a particularly good example of the benefits resulting from private, nongovernmental initiatives which can produce important and broad public benefits. I trust that the Oversight Subcommittee of the House Ways and Means Committee will agree. If we can provide additional evidence of the value received from our relationship to private foundations, please let us know.

Sincerely,

WILLIAM R. SEELBACH, *President.*

COLLEGE OF PHYSICIANS &
SURGEONS OF COLUMBIA UNIVERSITY,
New York, N.Y., June 17, 1983.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: As the Director of Pediatrics of the Columbia University-Harlem Hospital Center I am delighted to provide you with information regarding the value of foundations in the development of health care programs in a municipal hospital. Harlem Hospital, one of the municipal hospitals in New York city is located in Central Harlem, an area predominantly of lower socioeconomic class status with very high morbidity and mortality rates. In the winter of 1982 this department received a grant from the Commonwealth Fund ($396,500 for three years) to develop a program designed to improve the health and development of disadvantaged children. These funds which have been matched by the Health and Hospitals Corporation has allowed us to develop a program to high risk pregnant women and enroll them into primary obstetrical care for themselves and pediatric care for their newborn infants. The results of the evaluation of this program will have significant policy implications for the delivery of obstetrical and pediatric care to women and children.

For hospitals located in lower income areas funding from the Commonwealth Fund and other foundations represents the only opportunity to develop and test new health programs. Since municipal hospitals are chronically underfunded for basic services, foundation support is the only avenue possible for the financing of innovation in the delivery of health services.

I also wish to support Representative Conable's legislation H.R. 3043. This legislation improves the funding of foundations as well as encourages the formation of new foundations. Historically foundations have provided vital seed money to public institutions providing services for the poor. Without their support these organizations would be unable to make any progress.

Sincerely,

MARGARET C. HEAGARTY, M.D.,
Director of Pediatrics, Harlem Hospital Center.

THE COLLEGE OF ST. CATHERINE,
St. Paul, Minn., June 13, 1983.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: It is my understanding that the Oversight Sub-Committee of the House Ways and Means Committee has scheduled two days of hearings on Private Foundations to increase its awareness of services provided by foundations at local levels and to evaluate the continuing benefits of foundation activity.

I would like to add my expression of appreciation to foundation activity in general, and to the community foundation in St. Paul, Minnesota, in particular, for helping to initiate Un Primer Paso Hispanic Motivational Program, an educational/motivational program for Hispanic Junior High School girls.

The Saint Paul Foundation has awarded $50,000 over a two year period to support operating costs for this project. Funds have been used to (1) hire a project coordinator, (2) pay stipends for peer counselors, (3) support year-long community workshops, and (4) implement a six-week Summer Institute.

The purpose of the project is to motivate young Hispanic women at the junior high school level to pursue programs in higher education. Specific outcomes which are anticipated include (1) an increased understanding, by participants and their parents, of educational and professional opportunities available to Hispanic women, (2) an increased achivement level of participants in the basic skills necessary for post-secondary education and/or competitive career choices, and (3) an increased awareness and pride in Hispanic cultural heritage. To date evaluation of the project has been positive. Approximately 100 students have participated in the year-long program culminating in the Summer Institutes. The project will now be absorbed by the Hispanic Women's Economic and Development Corporation, a non-profit organization designed to promote the independence and individuality of Hispanic women.

Clearly, without the start-up grants from the Foundation and the Foundation's willingness to risk experimentation with a project of this nature, these educational/motivational services would not have been possible. The impact of this project will undoubtedly have a long-term beneficial effect on the individual participants in the project, on the Hispanic community, and on the St. Paul Community in general.

I hope that you will recognize the value of foundation's activities in local communities and support their ability to continue their effective services.

Sincerely,

JUNE E. NORONHA,
Director, Intercultural Programs.

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK.
GRADUATE SCHOOL OF BUSINESS,
New York, N.Y., July 16, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR CHIEF COUNSEL SALMON: I am writing to express my support for H.R. 3043 and request that my letter be made an official part of the hearings record. The role of foundations has become so important in American society, and their potential to contribute further so great, that equalizing the tax incentives for gifts between foundations and other charitable institutions is, in my opinion, an important goal to be realized.

While my record of foundation support I am sure pales in comparison to that of many other scholars, my support has been substantial over the last several years. I suppose the most critical role foundation support plays, at least in my own experience, is to encourage projects that otherwise would not have occurred. My colleague, Dr. Charles Brecher of New York University, and I undertook five years ago to create the Setting Municipal Priorities project which publishes an annual volume on New York City problems and policy options. In the five years since the inception of the project, we have received nearly $1 million of foundation support, produced five separate volumes, fostered a high degree of collaboration among the City's universities and between the public and private sectors, and—we think—had a considerable impact on the policymaking process in New York City.

The SMP project would not have been possible without the support of New York area foundations, including the Commonwealth Fund, Charles H. Revson Foundation, Ford Foundation, Robert Sterling Clark Foundation, Rockefeller Brothers Fund, Robert Wood Johnson Foundation and others.

Sincerely,

RAYMOND D. HORTON,
Executive Vice President and Director of Research.

COMMITTEE ON INSTITUTIONAL COOPERATION,
Evanston, Ill., June 14, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I understand that the Committee on Ways and Means is looking into private foundations and the role they play in this country. In that context I would like to describe briefly an example of something which foundations do which is good for the United States.

The Committee on Institutional Cooperation is the consortium of the 11 universities listed on this letterhead. It was brought into being by their presidents 25 years ago to promote cooperation and coordination in a variety of fields. Since about 1970 one of our major efforts has been the development of programs to increase opportunities for minority young people to play greater roles in American society. In 1977 we approached the Lilly Endowment of Indianapolis for support of a doctoral fellowship program in the social sciences for students who are black, Hispanic, Asian-American, or American Indian in background. The Lilly Endowment responded favorably and has (with two renewals of their grant) contributed over $3 million to this effort to date. In 1978 the Andrew W. Mellon Foundation of New York City began making contributions for similar fellowships in the humanities. A year later the John D. and Catherine T. MacArthur Foundation of Chicago supported a similar effort in the sciences and mathematics. Together these three foundations have contributed slightly over $4,500,000 to this effort which supports nearly 50 students per year in the CIC universities.

The foundation funds have had a multiplier effect in two different ways. First, each of the 11 universities has agreed to support the students who receive fellowships for their first two years of study for up to two additional years. In effect, the $4,500,000 contributed by the foundations has been doubled. The second way in which the funds have been multiplied is that the universities have found that the joint recruitment system established in connection with the fellowship program has brought to them some of the best minority students they have been able to find. As a consequence, for every fellow supported by funds from the three foundations, the 11 universities award at least one additional fellowship to students who have applied through the fellowship program.

In a little more than five years this effort has become the largest privately supported doctoral fellowship program for minority students in the United States. Without the foundations and their willingness to respond to the pressing need to increase the number of minority individuals in key positions in American society, this program would not exist.

Finally, the students are doing very well. We have compared them with various kinds of groups, and their record to date is outstanding.

Sincerely yours,

FREDERICK H. JACKSON, *Director.*

THE COMMONWEALTH FUND,
New York, N.Y., July 19, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: Having attended the Subcommittee on Oversight's June hearings on private foundations, I want to say that the experience renewed my confidence in the democratic process. Representative Rangel, Representative Conable, other Subcommittee and Committee members, and the Subcommittee staff deserve much praise for the superb job that was done in developing the agenda, assembling diverse and well-spoken witnesses, and smoothly orchestrating a very comprehensive examination of issues.

I also came away from the hearings with greater confidence than ever that private foundations play a major role in our society, as a source of venture capital to the private voluntary and public sectors, and as a solid base of continuing support to many charitable endeavors.

While the hearings were noteworthy for providing a balanced view of foundation activities, I felt there were five areas where misunderstandings arose, and where, for the record, I wish to add clarification and make recommendations.

1. *The Number of Foundations and Their Birth Rate.* During the hearings there was regrettable confusion regarding the number of foundations and the trend in the number of foundations established each year.

The Internal Revenue Service (IRS) uses private foundations as a catchall category, and its figure includes "burned out" charities that are reclassified as foundations when they lose their original charitable classification. The Foundation Center, organized in 1956 to provide accurate information on foundations, rightly excludes these charities from its total of 22,535 private foundations. The Center's information is ironically based on information filed with the IRS. The IRS and the General Accounting Office (GAO) are well aware of the Foundation Center's system for keeping an accurate count of foundations.

I would urge that the Subcommittee require the IRS to correct the shortcomings of its reporting system for tracking the number of foundations. The data on the number of foundations and the birth rate of foundations presented by Thomas Buckman, President of the Foundation Center in his July 1, 1983 written statement to the Sub-Committee, should be treated as the reliable information on this issue. Some portion of the 2 percent excise tax, generally acknowledged to generate a multimillion dollar surplus of funds, should be used to settle on a realistic definition of foundations and accurate count of these institutions. The Foundation Center has already done the work, and that work simply needs to be verified for IRS.

Further, Congress should ask the Foundation Center to carry out other studies in the future that would serve to clairfy the role and significance of foundations, and a part of the surplus generated by the excise tax should be used to finance this work.

2. *Accessibility of Private Foundations.* Several statements were made during the hearings, suggesting that a large number of foundations are inaccessible, failing to list telephone numbers and publish information on their activities.

The cost of maintaining an office may mean that many small foundations must choose between maintaining a staff and making grants, and correctly choose to devote their funds to grants, relying on volunteer staff. Any random survey to see if foundations have listed telephone numbers would inevitably uncover many that do not, simply because of the numbers of very small organizations involved, remembering that 19,107 have assets of less than $1 million and therefore make grants of less than $50,000 a year.

This is not to say that foundations should not have an address, and within reason, be expected to have listed telephone numbers and distribute information on their activities. Some institutions (although I believe the number to be relatively small) that rightly should meet minimal accessibility requirements in fact do not.

This problem could be addressed by setting some minimal standards for different sizes of foundations, and perhaps implementing financial incentives or disincentives to encourage accessibility—as an alternative to legal standards that are difficult to enforce administratively. For example, it may be reasonable to simply require that any foundation with $20 million or more in assets (or $1,000,000 or more in annual grants) maintain a listed telephone number and publish information on its grants, with the application of a severe financial penalty if the requirement is not met. For foundations below that size, it might be better to offer some reduction in the excise tax if they show that they have a listed telephone number, announce their grants in a local widely-read newspaper, and so forth. In other words, positive incentives can sometimes yield more results than negative, perhaps unenforceable or inconsequential, penalties.

One last point, when the issue of accessibility was addressed at the hearings there was no acknowledgement of the quite elaborate public information system, designed explicitly to serve potential grantees, built up by the Foundation Center. Mr. Buckman outlines in his statement of July 1, 1983 the truly vast resources which the Center makes available to any person or institution seeking foundation support. Some small foundations no doubt rely on this central dissemination device, rather than attempting to support a public communications office of their own.

3. *Board and Staff Composition and Effects on Grantmaking Policies.* At several points during the hearings the inference was made that minority, women, and other groups do not receive a fair share of foundation grants because of their under-representation on foundation boards and staffs.

The evidence presented by Mr. James Joseph, the Council on Foundations' President, shows representation of minorities and women on foundaton boards and staff is improving. Undoubtedly foundations should diversify the composition of board and staff along these lines. My hope is that the Council on Foundations will be aggressive in encouraging this. I do not believe it is an issue to be addressed by regulation.

I think it is important to note that while there is some validity in judging the openness and accountability of foundations by their board and staff composition, equally important is taking a close look at the work foundations support. And here, the record of foundations is clearly positive. As Mr. Vernon Jordan and others indicated in their testimony, few American institutions as a group have done more to promote social and economic justice for minorities and women than have foundations. Thus one simply does not go from the observation that minorities and women are underrepresented on foundation boards to the conclusion that foundations are not atune to respond to these groups.

4. *Foundation Support for Minority-Owned or Controlled Organizations.* I want to caution against judging foundations' responsiveness to the needs of certain populations by the number of grants they make to minority-owned or controlled organizations—a position taken by some who testified. Through their support of institutions that serve the poor and disadvantaged (and a disproportionate share of foundation resources goes to such institutions) foundations do focus on minorities and disadvantaged groups. That is, one can not go from the observation that foundations make relatively few awards to minority-owned or controlled institutions to the conclusion that foundations are insufficiently concerned with the needs of minorities. As stated above, one would in fact be hard pressed to point to any other group of institutions, relative to their size, that has done more for the advancement and general well being of minorities.

To the extent that foundations have not supported minority-supported or controlled organizations as much as is needed, the expenditure responsibility provisions in H.R. 3043 would encourage foundations to work with these organizations. Therefore, in H.R. 3043, Congress already has a partial solution to the problem.

5. *Generalizing from Isolated Cases.*—My final caution is not to generalize from specifically cited instances of foundation abuses. The hearings dramatized the enormous diversity and pluralism of the foundation world. Like any congregation of 22,000 institutions, some are better than others, and undoubtedly some are low achievers or even guilty of misbehavior. Any consideration of regulatory issues, however, should focus on the overall performance of this industry, not on its misfits—unless the latter are appearing in such number as to indicate that the industry's overall performance is inadequate. I do not believe this to be the case, and therefore am comfortable in arguing against substantial additions to the existing regulatory structure. Put another way, any proposed additional regulatory measures should be judged in the light of this question: is there a risk that the benefits in identifying the few misfits may be outweighed by the negative impact on the whole industry?

In sum, I encourage the Congress to choose the route of minimal regulation. The hearings made clear that some of the current regulation has led to unintended and counter-productive consequences. I believe that many of the existing problems will indeed be solved by enactment of H.R. 3043, and by giving the U.S. Treasury flexibility on the excess business holdings issue—e.g., by allowing it to permit up to ten years for divestiture. On the latter issue, I believe that foundations should not be used as a means of controlling a company, and that therefore divestiture of excess business holdings is in principle a desirable goal.

I hope that you will find these comments helpful.
Sincerely,

MARGARET E. MAHONEY, *President.*

STATEMENT OF MARGARET E. MAHONEY, PRESIDENT, THE COMMONWEALTH FUND

My name is Margaret E. Mahoney. I am President of The Commonwealth Fund, a private foundation which was chartered in the State of New York in 1918. The Fund is located at One East 75th Street, New York City. At present it has assets of approximately $185 million and an annual budget of just under $12 million.

In this testimony I will focus on the work of The Commonwealth Fund because I know it best, but I believe that its work is broadly representative of the work being carried out by many other foundations around the country. I shall conclude with a statement of support for the proposed legislation, H.R. 3043, designed to improve the regulation of private foundations.

I. THE COMMONWEALTH FUND

The Commonwealth Fund was originally established "to enhance the common good," and in all its activities the Fund retains a deep concern for people and the institutions that serve them.

The Fund's Board of Directors has defined the foundation's core mission to be encouraging more effective health care for all Americans. The Fund supports activities to achieve this goal across the country, but also places particular emphasis on programs and institutions in its own community, New York City.

The Fund's secondary mission is to promote good relations between the United States and the United Kingdom, Australia, and New Zealand through the Harkness Fellowship Program, which allows talented young people from these countries to pursue postgraduate studies in, and become acquainted with, the United States.

A history of defining and attacking problems

Again and again in the last 65 years, the Fund has used the flexibility available to foundations to identify health care problems not receiving adequate attention and to support institutions and individuals with the interest and ability to devise solutions. For example, in the 1920's the Fund grappled with the then poorly recognized problem of juvenile delinquency, and this led to early and very influential support of services and training in child guidance. Model Fund programs in the 20's, 30's and 40's to provide health care to rural areas and to regionalize care were also far ahead of their times. The Fund has also supported the work of many distinguished medical researchers, including three Nobel Prize winners. As other sources of funding have developed for an important undertaking, the Fund has moved on to new activities where foundation support could make a difference.

Today's challenges and opportunities

At present, worries about our country's economy and the generally accepted belief that governmental expenditures cannot grow as in the past have created understandable pessimism about the outlook for further improvements in health care. This is a time when many may be too discouraged to search for creative responses to problems. But it is also a time when foundations can be particularly useful if they can show how, working with available resources, individuals and institutions can still pursue, evaluate, and adapt ways of making health care more effective.

The fund's present program

Our present program takes this path. It is designed in part to help health care institutions adapt their missions, programs, and operations so they can continue to fulfill public responsibilities without risking financial disaster.

First, we pay special attention to the quality of health care and of life in general in New York City.

Secondly, and in the tradition of the Fund, we are applying our limited resources to certain carefully selected problems with social and medical implications that need attention: for example, problems of elderly people; of low-income families, especially those headed by women; of members of minorities who wish to work in the health professions; and of lifestyles that effect an individual's health, specifically alcoholism.

Thirdly, we are especially concerned with the nation's more than 100 academic health centers—those multi-institutional federations comprising a medical school, one or more teaching hospitals, and other related institutions. These essential centers educate physicians and other health professionals, advance medical knowledge through their research programs, provide highly specialized care unavailable elsewhere, and frequently fill the general medical care needs of people in their communities which are often inner cities.

To be more specific about what we are doing in each of these three areas, I offer you the following thumbnail sketches of representative projects the Fund is now supporting.

New York City

Training Volunteers to Help Elderly People Continue to Live at Home: Volunteers are coordinating existing services for about 1,500 frail elderly people so they can avoid going into nursing homes; if this model proves effective it could be used in many other communities. $173,206, Laurence G. McFarland, Academy for Gerontological Education and Development, Bronx.

Improving the Health and Development of Children Through Early Preventive Care: Harlem Hospital is providing community care for some 400 young pregnant women that includes both medical and educational services, and continuing care for their babies through the first year of life. $269,921, Margaret Heagarty, M.D., Harlem Hospital.

Long Range Planning for North General Hospital: The only voluntary hospital in the Harlem area, and the area's largest private employer, is developing a financial and program plan crucial to its survival. $100,000, Eugene L. McCabe, North General Hospital, Harlem.

A Prepaid Medical System for the Bronx: Montefiore Medical Center is developing a medical care system for three financially stressed community health centers that, through prepayment for services, will allow the centers to make better use of resources and to continue serving some 12,000 Medicaid recipients and other poor people not covered by Medicaid. $232,624, Mo Katz, Montefiore Medical Center, Bronx.

Career Explorations: For a second summer, a program for 200 minority high school students is providing paid summer employment, job training, and counseling under the mentorship of Black professional and business men and women; those completing the program are automatically accepted to Hunter College upon graduation. $150,000 annual budget, Donna E. Shalala, Hunter College and the Coalition of 100 Black Women, Bronx, Brooklyn, Manhattan, and Queens.

Counseling for Alcoholics and Their Families: A city service is guiding alcoholics and their families on the best treatment. $10,000, Edmona L. Mansell, Freedom Institute, Inc., Manhattan.

Developing a Children's Zoo for Brooklyn: A new educational zoo for children is being designed to replace the present facilities in Prospect Park; when completed, the new zoo will serve an estimated 2 million visitors a year. $250,000, William Conway, New York Zoological Society, Brooklyn.

Health-related problems

The elderly

Research Into the Major Cause of Senile Dementia: Researchers at Albert Einstein College of Medicine, New York City, The Johns Hopkins University, Baltimore, and Yale University, New Haven, are searching for the causes of Alzheimer's disease, a form of senile dementia that affects an estimated 1.25 million Americans and fills nursing homes with its victims. $250,000 to each of the institutions.

Directory of Continuing Care Retirement Communities: Contracts to assure lifelong residence for elderly people in a caring community began to appear in this country some fifteen years ago, largely encouraged by church groups; now close to 300 such communities exist, and interest in developing more is growing. This directory, to be updated annually, will inform those interested in living in such a community. $24,830, Erik Gjullin, American Association of Homes for the Aging, Washington, D.C.

Meeting the Needs of the Functionally Dependent Elderly: What are the options? This study is developing national strategies to deal with the problems of elderly Americans who are both physically frail and needy. $300,017, Karen Davis, Ph. D., The Johns Hopkins University, School of Hygiene and Public Health, Baltimore.

Developing a Social Health Maintenance Organization for Older Americans: This experimental program will meet the medical and other daily needs of about 4,000 elderly people, providing nursing home care if necessary, in exchange for an annual fee paid jointly by Medicare and the individual member. $175,000, William C. McMoran, Senior Care Action Network, Long Beach, California.

Children and teenagers

Determining Factors Affecting Economic Independence and Family Stability for Teenage Mothers: Researchers at The University of Pennsylvania are interviewing 300 low-income women who were teenage mothers about fifteen years ago to determine which women have achieved economic independence for themselves and their children, what factors explain their success, and how this information might be used to help other teenage mothers. $375,000, Frank F. Furstenberg, Jr., Ph.D., University of Pennsylvania, Philadelphia, Pennsylvania.

Development of a Community-Based Center for Troubled Adolescents: This center is providing education, job training, medical care and counseling for youngers between the ages of 13 and 20 who might otherwise be placed in psychiatric hospitals far from home. $150,000, Marion Wright Edelman, Children's Defense Fund, Washington, D.C.

Project Self-Renewal: A ground of Black professional women, with other professional and community groups, is designing a program in several cities to help Black teenage mothers and fathers obtain economic independence; the program will provide each young person with a role model/mentor and services such as school guidance, family planning and other health care, pediatric and day care, and job counseling, training, and placement. $550,000, Jewell J. McCabe, Coalition of 100 Black Women, New York City and several sites to be determined.

Minorities in the health professions

The General Medical Care Needs of Low-Income Blacks—Are Younger Black Physicians a major source of care?: This study is examining whether young Black physicians are continuing to provide, as their elders have, the majority of health care to low-income Black communities and, if not, what steps are necessary to ensure a steady supply of new physicians for these communities. $195,525 August G. Swanson, M.D. and Stephen N. Keith, M.D., Association of American Medical Colleges, Washington, D.C. and nationwide.

Developing Careers in Academic Medicine and Research: National Medical Fellowships, Inc. is administering a program aimed at guiding 100 academically gifted minority medical students toward careers in academic medicine and biomedical research, thus partly correcting the shortage of minority doctors in these professions. $260,000, Leon Johnson, Jr., National Medical Fellowships, Inc., New York and nationwide.

Alcoholism

Hospital Outpatient Treatment of Alcoholism: The Bronx Municipal Hospital is testing a self-help approach to treating alcoholism in a large outpatient department of a major hospital; if successful, this less expensive and less disruptive approach could be used in similar facilities elsewhere, which nationwide now treat over 600,000 alcoholics a year. $202.904, Marc Galanter, M.D., Albert Einstein College of Medicine, Bronx, New York.

Comparison of Treatment Approaches used in Industrial Alcoholism Programs: Determining which of three common approaches used by industry to treat alcoholism in workers—simple confrontation, outpatient treatment, or hospitalization—is more effective, with the cost factor included; being carried out in cooperation with selected General Electric Company plants in Massachusetts. $405,000, Diana Chapman Walsh, Boston University Center for Industry and Health Care, Boston, Massachusetts and statewide.

Strengthening the Skills of General Physicians in the Treatment of Alcoholic Patients: Harvard doctors are developing and testing programs to prepare general practioners to better diagnose alcoholism in patients, particularly at the early stage, and to coordinate its treatment. $446.354, Thomas L. Delbanco, M.D., Harvard Medical Center, Boston, Massachusetts.

Can A Law Reduce Traffic Accidents in Maine Cause by Drunk Driving?: This study is determining what effect a new and very strict drunk driving law in Maine will have in reducing traffic deaths and injuries. $268,439, Ralph W. Hingson, Sc.D., Boston University School of Public Health, Boston, Massachusetts and Maine.

Use of medical technology

Studies at Dartmouth Medical School, the Rand Corporation and the University of Rochester are seeking ways to guide doctors in the use of expensive procedures, encouraging proper use without compromising the quality of care. The Rochester study is paying special attention to severe problems of older people, specifically to the treatment of pneumonia and vascular disease. $330,000, John E. Wennberg, M.D., and Daniel F. Hanley, M.D., Dartmouth Medical School, Hanover, New Hampshire; $625,000, Robert H. Brook, M.D., The Rand Corporation, Santa Monica, California; $250,000, Paul F. Griner, M.D., University of Rochester Medical Center, Rochester, New York.

Academic health centers

Alternative Strategies for Urban Health Care and Medical Education at Downstate Medical Center: Downstate Medical Center, the only academic health center in Brooklyn and a major provider of health care services in that borough, is working out alternative strategies for redeveloping the center so it can better serve the community. $150,000, Donald J. Scherl, M.D., The State University of New York, Brooklyn, New York.

Better Information for Academic Health Center Planning in New York City: Work to guide academic health centers in New York City in developing plans to make New York City an important world medical center. $379.398, Eli Ginzberg, Ph.D., Columbia University, Conservation of Human Resources, New York City.

Strengthening the Management Capabilities of Meharry Medical College/Faculty Development at Meharry Medical College: Meharry's concerted effort to improve its management strenghts and its academic program is supported by one Fund grant to fill important management positions and develop better financial and management information systems, and a second to provide a fully endowed faculty chair. $300,000, Richard G. Lester, M.D.; $1,000,00 over five years, David Satcher, M.D., Ph.D., Meharry Medical College, Nashville, Tennessee.

Developing a Comprehensive System of Publicly Supported Health Care Services for Mothers and Children in Iowa: The University of Iowa is developing a statewide plan to assure health care for pregnant women, new mothers, and children with rare diseases. The university is the major provider of care to women and children in the state, managing most government funds for these services, and is thus in a central position to carry out such a plan. $70,000, Samuel Levy, Ph. D. and John W. Colloton, The University of Iowa Hospitals and Clinics, Iowa City, Iowa.

Collaborative Effort to Develop a Better Medical Care System for Patients Covered by Medicaid: Eight teaching hospitals with the neighborhood health centers in Boston, are forming a private, nonprofit corporation to contract with the Commonwealth of Massachusetts to provide all Medicaid-financed services to 75,000 women and children for a predetermined, annual, all-inclusive fee, thus containing costs without denying or reducing coverage. $300,000, Jerome H. Grossman, M.D., New England Medical Center, Boston, Massachusetts.

I hope this brief summation of current work supported by The Commonwealth Fund gives adequate evidence of the breadth and variety of people, institutions, and activities that foundations like the Fund support. These grants illustrate the deep commitment of The Commonwealth Fund, and other foundations, to invest our funds so as to bring about marked improvements in the way institutions and organizations function and in the lives of the people affected by them.

The Commonwealth Fund and other foundations have accomplished what they have over time largely because of the flexibility they have been accorded in meeting the changing needs of a dynamic society. The importance of this flexibility is reflected in my following remarks on the proposed legislation H.R. 3043, a bill revising the regulation of private foundations.

II. PROPOSED LEGISLATION TO CHANGE REGULATION OF PRIVATE FOUNDATIONS

I believe that H.R. 3043, which has been introduced by Congressman Barber Conable, addresses a number of problems that have hampered private foundations since the 1969 tax reform legislation and therefore deserves support. In brief, the proposed legislation would:

Encourage the establishment of new foundations and the giving during the donor's lifetime of gifts to existing foundations by making lifetime gifts to foundations deductible on the same basis as gifts to other charities. Income tax deduction rules for

Gifts to private foundations are now less favorable than rules governing gifts to other charities. The reasons for making these rules more restrictive have been removed by subsequent legislation, while the rules continue to contribute to a decline in the formation of new foundations and in lifetime giving to existing private foundations.

Clarify and simplify certain regulations that, as now formulated, place an onerous administrative burden on foundations and limit their flexibility to respond to need. Under the new legislation foundations would be more able to make effective small grants on short notice—for example, to newly organized community programs.

Mr. Chairman, as I indicated earlier in this testimony, foundations are working today in a complex environment. It is not a climate of expansion, but one of general refinement; and it is not a time in which funding will grow rapidly, but a time to seek more effective ways to use existing resources. However, it is a time when foundations can play a particularly important role in stimulating the exchange of ideas and in searching out fresh approaches that may encourage others in this uncertin climate. The Commonwealth fund's efforts today reflect the desire to help in the discovery of what works best while further testing yet better ways to do things.

The Fund has issued an annual report each eyar since its first year of operation, which was 1918–19. We also issue brochures about our various activities, and make available to anyone interested all reports to The Board of Directors on program proposals. It is also a policy of the Fund to seek co-funding for projects where possible.

I submit the evidence above with the strong belief that foundations are a principal part of the private sector of this country. This country is unique in its commitment to private philanthropy for the public good. It is a heritage that should be treasured by us all. But honoring such a heritage does not preclude keeping a watchful eye over the performance of foundations, and the hearings seem an appropriate step to me to review present activities of as well as unneeded restrictions on foundations.

COMMUNITY SERVICE SOCIETY,
New York, N.Y., June 15, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: Upon learning that the Oversight Subcommittee of the House Ways and Means Committee has scheduled hearings on private foundations, Community Service Society of New York wanted to take this opportunity to describe the results of some of the grants we have received to illustrate the enormous importance of the role of private foundations.

Community Service Society, one of the oldest and largest private, nonprofit social welfare organizations in the country, is dedicated to helping the poorest, most disadvantaged populations in New York City obtain services, supports and opportunity for self development. This mission is carried out through direct service projects that seek to establish more effective, efficient programs and service delivery methods; through technical assistance to community-based organizations to strengthen them organizationally and in their provision of services to local populations; and through the study of social needs which may lead to seeking policy changes at the city, state or federal level of government.

Many important social programs owe their genesis to flexible and innovation foundation grants that were invested in untested activities. Here are just three recent examples:

In December, 1978 with the help of a grant of $50,000 from the Ittleson Foundation, Community Service Society undertook a study of New York City's rapidly growing population of homeless persons. Its purpoes was to better understand this problem together with the kinds of help that might be offered. Two social scientists spent months on the streets and in shelters interviewing homeless people. They found that the homeless no longer are mostly white male Bowery drunks. Added to this group were large numbers of former mental patients. Now they increasingly are young, black, Hispanic and female and are on the streets often as the result of unemployment and inadequate housing. A number of needed social interventions were identified including an urgent need for more adequate shelters. The study gained widespread media attention leading to a greater public awareness about the nature of the problem. The research team became a resource to persons from other cities faced with a similar situation. The findings have been cited at legislation hearings at all three levels of government and have contributed to the development of a number of new programs and the expanson of shelters, both public and private.

A grant of $20,000 from the Mary Reynolds Babcock Foundation in May, 1981 enabled Community Service Society to provide intensive technical assistance and training to a small, recently established Haitian organization in the Crown Heights section of Brooklyn called the Charlemagne Peralte Center. The Center is seeking to serve some 20,000 Haitians living in the surrounding area. These people mainly speak Creole, have little formal education and are struggling to meet urgent survival needs. With language and cultural barriers, they are reluctant to turn to the more established agencies for help. The purpose of the technical assistance was to strengthen the Center organizationally, to help find ways to expand the services it is able to provide and to help the Center form working relationships with other organizations as an additional means of expanding the resources available to this population. The effort turned out to be highly successful. The Center, together with several other Haitian organizations and with Community Service Society serving as intermediary, secured a federal grant that provided emergency assistance to Haitian refugees and a state grant to provide an employment program. Also, an English as a Second Language program was instituted. With a firm track record established, the Center is now in a position to seek additional outside support and the establishment of a full range of needed services.

Three grants were provided—in May 1928 by the J. M. Foundation in the amount of $25,000, in October 1982 by the Public Welfare Foundation in the amount of $30,000 and in March 1983 by the Fund for the City of New York in the amount of $10,000—to develop a demonstration project for the delivery of school-based, primary and preventive health care services to 6,000 children in five elementary and one intermediate school in the South Bronx. As a result of cut-backs over a number of years, school health services in New York City have all but disappeared. This has created an especially serious problem in the South Bronx where the majority of the people are black or Hispanic of whom 60 percent are below the federal poverty level. People use medical care on an episodic basis usually when a crisis occurs. The program pairs each school with a nearby health center. Each school has a health care team consisting of pediatrician, a pediatric nurse practitioner and a school health aide. Physical examinations, diagnosis and treatment of minor illness, management of chronic illness, emergency care and preventive services are provided at the school. Back-up care is provided at the nearby health center where the entire family is encouraged to participate in the program. This degree of collaboration between educators, children, parents and health care professionals is unprecedented. The program, at the conclusion of its first year, is proving to be highly successful with 60 percent of the children enrolled, In addition, plans are underway to expand the program into other poverty areas. A grant from the New York State Department of Health is helping to meet the cost of health care. The foundation grants provide for central coordination, health education and program evaluation.

We are pleased to offer these examples of the many ways in which private foundations are making it possible for organizations like the Community Service Society to expand and enrich services on behalf of poor people.

Sincerely,

BERTRAM M. BECK, *General Director.*

CONSERVATION OF HUMAN RESOURCES,
COLUMBIA UNIVERSITY,
New York, N.Y., June 21, 1983.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight,
Committee on Ways and Means, Washington, D.C.

DEAR CHARLIE: I have recently learned that the Subcommittee on Oversight, Committee on Ways and Means, which you chair, will be holding hearings shortly on foundations. I thought it might be helpful to your colleagues and yourself if I sent along some brief comments on my long-term experience with foundations extending over 40 years. I would appreciate it if you made this letter part of the Committee's record.

The first funding that I received to pursue research into a new and largely unplowed area came from the Rockefeller Foundation in 1941. I studied the occupational changes to young men being released from 12 months of military service. By year's end I was working part-time for the Executive Office of the President and in 1942, full time for General Somervell, Commanding General, Army Service Forces. Immodestly, I can report that I was helpful in the formulation of both civilian and military manpower policy.

By 1943, I was in charge of all medical logistics for the Surgeon General of the Army. All of my wartime work in Washington was influenced by the modest grants from the Rockefeller Foundation which also helped to activate the base for the Conservation of Human Resources Project which General Eisenhower established when he was president of Columbia University (1948) and which I have directed since its inception. Eisenhower arranged that the Conservation Project be supported primarily by funding from large corporations but we also had grants from several charitable foundations. Our principal studies during the 1950s were focused on mining the rich military records in the possession of DOD which resulted, among other studies, in "The Uneducated," "The Ineffective Soldier: Lessons for Management and the

Nation" (3 volumes), and "The Negro Potential." Both the federal government and the civilian sector made extensive use of these books.

Starting in 1950, the Ford Foundation made a series of grants exceeding $1 million to establish the National Manpower Council at Columbia University which I initially directed. The Council, over its lifetime, published 10 major studies into the nation's manpower problems, including the first comprehensive volume on womanpower. Once again the linkages between our research and public policy was very close, not only because of the continuing interest of President Eisenhower but also because of the active involvement of the Secretary of Labor, James P. Mitchell.

In the early 1960s, the Carnegie Corporation and the Rockefeller Brothers Fund provided funding for longitudinal studies of talented men and women, an expensive type of research. Their combined support amounted to $250,000 and led among other publications to a book on "Life Styles of Educated Women," a precursor of the women's revolution.

In the late 1960s, the Rockefeller Brothers Fund made another grant of about a quarter million dollars to have me reassess the state of career counseling and guidance. The report, when published in 1971 by McGraw-Hill, has considerable impact, particularly on guidance in school systems as they affected women and minorities.

With the passage of MDTA in 1962 the U.S. DOL had funds for the first time for external research grants and for the better part of two decades the Conservation Project received a large part of its funding from DOL. However we also continued to receive foundation grants from Russell Sage, Taconic, The Field Foundation, as well as additional funds from the major foundations previously identified. My book "Career Guidance" (1971), is dedicated to 6 foundations for their support to the Conservation Project over 3 decades.

With the passage of Medicare and Medicaid, the Conservation Project returned to an earlier interest in health policy research. In the last decade it has received over $1 million in support from The Robert Wood Johnson Foundation for studies in Health Manpower and The Delivery of Health Services to Minorities. We have also received grants from foundations funded by the National Blue Cross and the Blue Cross of Greater New York for studies on Home Health Care and The Changing Health Care Delivery Systems.

Currently we have funding of just under $400,000 from Commonwealth Fund for a 3-year effort to explore opportunities for cooperation among the 4 major academic health centers in Manhattan.

The Conservation Project has also received almost a half million dollars of funding from the Revson Foundation and Sloan Foundation to study the labor market behavior of immigrants into New York City with particular reference to their competition with natives.

Since the DOL has largely stopped supporting external research, the Conservation Project, despite its more than 40 years of performance, would have had to close shop if not for increased foundation support.

As one who has been fortunate enough to receive research support from all three sources—the private sector, government, and foundations, I would strongly urge Congress to act to encourage the establishment of new foundations and to facilitate the work of existing foundations. I have found on the basis of my long experience that foundation trustees and staffs foster the most constructive relations to their grantees by offering them the maximum degrees of freedom.

I do hope that your Subcommittee will support H.R. 3043.

With warm personal regards,

ELI GINZBERG, *Director.*

CORCORAN DISTRICT HOSPITAL,
Corcoran, Calif., June 14, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: The purpose of this correspondence is to provide information to the oversight sub-committee of the House Ways and Means Committee regarding the forth coming hearings on private foundatins. I therefore request this letter be made an official part of the hearing record.

I am writing on behalf of Corcoran District Hospital, a small rural hospital located in the central San Joaquin Valley of California. Our community's main industry is agriculture and agriculture related services. Our hospital serves a large number of low income families and individuals.

During the mid 1970's the hospital was in need of physical plant modernization. These needs were to provide for a larger number of outpatient services and a higher quality of inpatient acute care. The hospital, as many small rural hospitals, had not been experiencing sufficient utilization to generate any capital reserves for such an undertaking. The only solutions to this dilemma were to seek government tax funds or to turn to the private sector for support.

Working with two private foundations, The Corcoran Community Foundation and the James G. Boswell Foundation, the hospital was able to receive the necessary 1.6 million dollars to complete the necessary renovations. Since completion of the project in late 1977, the community has had available a modern, acute care hospital with many services now available on an outpatient basis.

Clearly, the current status of the hospital was only made possible through these private foundations' bequests. Had it not been for the vital support of these private foundations, there would most likely be little or no health care services available today to the residents of our community..

This is but one example of the support that private foundations give to community projects. In our community a number of major projects have been completed with the support of private foundations during the forth coming oversight sub-committee hearings.

Very truly yours,

DON N. LARKIN, *Administrator.*

THE CORCORAN FAMILY YMCA,
Corcoran, Calif., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: On June 27-28, the Oversight Subcommittee of the House Ways and Means Committee will be holding hearing on private foundations.

I am writing this letter on behalf of the board of Directors of the Corcoran Family YMCA, Corcoran, California. Our YMCA was developed and chartered in 1978 to serve a small community of 6,500.

Through the YMCA, the quality of life in our community was greatly improved for all ages. There is an active Senior Center meeting the needs of our Seniors in many ways, including and outstanding Nutrition Program. Migrant farm worker's children are programmed through several specific programs.

The resident of our community are thus receiving valuable support in their life style. This important and vital part would not be possible without the support of the Corcoran Community Foundation.

The Foundation's help in the capital building fund on a "4 to 1" basis made possible for a facility being built to begin with. Then, through their support of many programs such as Latchkey and Senior programming, we are able to develop and maintain these vital programs for those that need them the most but can afford them the least.

We are a strong YMCA today because of the support of the Corcoran Community Foundation. Without its help, we would not even be in existence.

I would request that this letter be made an official part of the hearing reocrd. Thank you.

Sincerely,

ROBERT MOWRY, *General Director.*

COUNCIL OF JEWISH FEDERATIONS, INC.,
New York, N.Y., June 27, 1983.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is submitted on behalf of the Council of Jewish Federations, pursuant to your announcement and invitation dated May 3, 1983, for the record of the Hearings on Foundations June 27, 28 and 30, 1983.

The Council, which is headquartered in New York City, is an association of central community Jewish organizations located in almost every major city in the United States. These organizations obtain contributions to provide a wide variety of humanitarian services to hospitals and clinics, institutions and agencies for care of the aged, agencies providing family and children welfare, youth and community centers, centers for students on campuses, vocational guidance, placement and rehabiliation services, and other forms of humanitarian and educational assistance.

The organizations that are members of the Council, as well as the Council itself, are all classified as tax-exempt charitable, educational or religious organizations and as "public charities" under the tax laws.

While none of these organizations are "private foundations" under the tax laws, the Council and its member organizations have a strong interest in the entire field or private sector support for charitable purposes and institutions.

The community organizations which are members of the Council derive their support principally from contributions from individuals, foundations and corporations. Thus, although the Council members themselves are not private foundations, they have a deep interest in the continued health and growth of all forms of private sector support, including private foundations. Indeed, private foundations play a necessary and important role in our pluralistic society, not only in supporting community charitable institutions but also in providing initiatives and partnerships for new ideas and support for a variety of efforts to improve the quality of life, which sometimes cannot be included, at least initially, in the budgets of established charitable and educational institutions.

The Council of Jewish Federations is concerned about any changes in our tax laws which may inhibit support of charitable purposes and institutions. Support of the poor, the aged, the ill and others in distress, as well as dedication to community rehabilitation, safety and health, have all been essential elements in the responsible growth of our communities. This responsibility has been fully recognized under our tax system. The government, in its tax policy, has recognized that it should not deprive communities and social welfare institutions of their traditional support. In fact, tax policy has generally encouraged private sector support for such purposes in recognition of a national consensus that all individuals and entities should be encouraged to assume their share of community responsibility.

At this time, as government policy has sought to reduce taxes and, to that extent to reduce some of the tax incentives for charitable giving, and as that policy further seeks to shift some of the responsibility for social welfare away from the Federal government and to the states and the private sector, it becomes even more important that the Congress be aware of the need to improve, through various means, the climate for charitable support from individuals, foundations and corporations.

As the Committee undertakes this first major review and reexamination since the Tax Reform Act of 1969 of the tax policy with respect to the treatment of private foundations, we respectfully urge that it takes into account the importance—to the social welfare needs of this country—of all forms of support from the private sector, including that of private foundations. It is true that one of the effects of the 1969 Act was to encourage greater support for public charities, and the Federations which are members of the Council have benefited from that policy. However, we are concerned that from a long-range point of view, changes in the tax laws have tended to reduce the growth of other private initiatives in the form of family and company sponsored foundations. We believe that in many cases funds or property that might otherwise have gone into foundations have simply been used or devoted for private purposes, rather than community charitable purposes, because of the limitations upon or other difficulties inherent in creating a new foundation or adding to the assets of a foundation. Charitable giving is voluntary; and once money or property that might otherwise have gone into the creation of a foundation has been diverted for private purposes, it is likely to be lost forever as a source of further support of community charitable, educational and religious organizations.

A number of studies have been conducted with respect to impediments on charitable giving and, in particular, on the difficulties involved in the creation of and contributions to foundations. The Committee undoubtedly will hear, during the course of its hearings, many suggestions growing out of these studies. We recommend that the Committee consider carefully all such recommendations which have as their basic purpose improvements in the climate for charitable giving and methods of facilitating the creation and maintenance of charitable funds and foundations. We, as the Council, are not attempting to establish priorities for any specific form of relief or correction under the existing law. We do, however, recommend that the Committee consider sympathetically all such recommendations which are likely to increase the private sector support for foundations in all proper forms.

As a Council of community organizations which are all public charities, we could simply encourage the Congress to provide greater incentives for contributions to public charities; and we will do so in connection with any other legislative proposals which, in our view, may tend to reduce contributions to publicly supported charitable organizations. However, since these hearings are focused on private foundations, we wish to make clear to the Committee that our position is not a narrow one but is broadly based in serving the needs of the entire community. Private foundations play an important role in meeting those needs. If contributions to the entire charitable community are encouraged and inhibitions are lessened for the creation and added funding of private foundations, broadly based community organizations, such as our member federations, will receive their share of support and each of our communities will be better served by the variety of resources which are made available.

Congressional encouragement of charitable organizations of all kinds evidences one of the proudest attributes of the American people; private sector voluntary support for efforts to meet human needs and improve the quality of community life. People are better off if they give. Giving patterns in a variety of forms are necessary in carrying out community responsibilities. We urge the Congress to keep in mind these principles in its review of the tax treatment of foundations and that any appropriate steps to erncourage charitable giving through foundations, as well as through other means, will be welcomed by all responsible community minded citizens and organizations.

Very truly yours.

CARMI SCHWARTZ, *Executive Vice President.*

COUNCIL ON DRUG ABUSE,
Winston-Salem, N.C., June 16, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing to express my concern and to request that this concern be made an official part of the hearing record of the Oversite Subcommittee of the House Ways and Means Committee at its hearings on private foundations June 27-28, 1983.

The Council on Drug Abuse probably would not exist were it not for the efforts of private foundations. This program, which offers drug abuse treatment and prevention services to Forsyth County and the Northwest Piedmont area of North Carolina, was developed with the interest and concern of several foundations in our area. Though this indicates the importance of the private foundation to our early beginnings, more recently we have been assisted by private foundations in making up for some of the severe federal budget cuts which have occurred in the area of drug abuse.

It is my sincere wish that the committee, in its deliberations, act to encourage and support the private foundation as an invaluable resource in our society: one which can often act when government cannot; one which can often see needs when other institutions are not attuned; and one that can respond to specific situations in specific communities and have maximum impact on people.

Sincerely,

JOHN E. SHIELDS, *Executive Director.*

COUNCIL ON LIBRARY RESOURCES,
Washington, D.C., June 16, 1983.

Re Oversight Committee June 27-28 Hearings.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am president of the Council on Library Resources, an operating foundation now in its twenty-seventh year. We aim to be useful to academic and research libraries and those who use them. While we concentrate our work in this specific area, our operations tend to involve not only librarians and libraries but universities, many scholarly disciplines, library and academic associations, and scholarly publishing.

Over the years the Council has supported such diverse activities as development of computerized bibliographic systems; funded fundamental research on paper deterioration and pressed hard for national attention to preservation problems; funded, with the National Endowment for the Humanities, work in a number of colleges to tie libraries more closely to classroom instruction; helped upgrade management of research libraries; and recently mounted a major program to upgrade professional education for the library profession itself. Out most recent annual report gives some sense of current interests and activities, as well as present funding sources.

This Council has, from the beginning, been funded by private foundations—initially and for twenty years by the Ford Foundation, and since 1977 by a growing number of others. I chair the "Foundation Library Committee", an informal group of foundation representatives that has grown from five or six members in 1977 to fifteen at present. We held our twenty-sixth meeting in New York last week, and it was noted then that the committee is an exceptional example of how private foundations cooperate to address matters of importance needing persistent attention.

And it is such persistent attention that is required to help transform research libraries, with their long-established and fundamentally important obligations to society, into organizations able to cope with the flood of information, current economic realities, and ever-expanding user expectations. The intelligent application of computer, communications, and text storage technologies to the operating systems of libraries and the needs of users is at the heart of our current work. Organizational, economic, and educational matters are all necessarily involved.

By using funds provided by private foundations, our own Board is able to plan and carry out extended research and development programs that involve many individuals, academic institutions, and at times, the Library of Congress and other federal agencies.

Nearly $50,000,000 has been provided to CLR for its work by private foundations since 1956. A still-growing agenda, widespread dependence on our capacities, and expanding interest in providing support suggest that our particular approach to getting things done is effective and that the participating foundations, with both their financial resources and their willingness to work together, are demonstrating their ability to address matters of great public importance.

We request that these observations and our annual report be made an official part of the hearing record.

Sincerely yours,

WARREN J. HAAS, *President.*

[The annual report has been retained in the subcommittee files.]

CREATIVE LIFE CENTERS INC.,
SERVICES FOR OLDER ADULTS,
Winston-Salem, N.C., June 15, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I was recently interested to learn that the Oversight Subcommittee of the House Ways and Means Committee has scheduled two days of hearings on private foundations June 27-28, 1983. As the Executive Director of an agency which serves the needs of the elderly, and one which owes much of its continued existence to private foundations, I am prompted to write in the hope that my imput might be of some value. I also would like to request that this letter be made an official part of the hearing record.

The agency that I represent is Creative Life Centers, a private, nonprofit organization serving the frail and disabled elderly of Forsyth County, North Carolina. Our programs for the elderly consists of nutritious meals being delivered each day to homebound elderly, activity programs for older persons who are "at risk" of being institutionalized, and home care services for the elderly who need homemaker or home health care services in their homes.

Our agency would not be able to deliver the services that it does, nor would it be in existence, were it not for private foundations. We are extremely fortunate that in our community, a number of private foundations exist to serve the people of Forsyth County, other parts of North Carolina, and beyond. These foundations include: The Mary Reynolds Babcock Foundation, the Z. Smith Reynolds Foundation, The Winston-Salem Foundation, The Kate B. Reynolds Poor and Needy Trust and Health Care Trust, The James G. Hanes Memorial Fund/Foundation, and The Mary Duke Biddle Foundation.

How are foundations so helpful to us? By granting start-up funds for new and innovative initiatives and by filling gaps in our funding at times when no other sourse is available. For example, we recently received a $70,000 commitment over three years from the Winston-Salem Foundation for our Home Care Program. The money, which was not available from any other source, will enable us to coordinate our in-home services more closely with our local Health Department, and also give us the necessary breathing space to develop a subcontract with the Health Department for long term stable funding of the program. This grant is important to our community in that it coordinates in-home services between a public agency and a private, non-profit agency and because it responds to cutbacks in funds for in-home services by attempting to better coordinate and improve existing services.

This is but one example of numerous grants that foundations have awarded agencies like ours, and the directions that many are taking. We feel especially good about foundation support in that we know that our funding proposals are looked over carefully and approved or denied by important professionals of our community. In addition, we know that private foundations are very interested in a full account of the expenditures of their appropriations, but without much of the unnecessary paperwork which often accompanies financial support.

Let me say again that we are very proud and appreciative of private foundations in our community. Time does not allow me to tell you all of the excellent projects that our local foundations are involved in, but I hope I have conveyed to you part of our enthusiasm and appreciation for them.

Thank you for considering this letter and for your continued support and interest in the role of private foundations.

Sincerely,

RICHARD GOTTLIEB, *Executive Director.*

CRIPPLED CHILDREN'S HOSPITAL FOUNDATION,
Memphis, Tenn., June 17, 1983.

Re Subcommittee on Oversight of the Committee on Ways and Means Hearings to Examine Rules Governing Private Foundations.

JOHN J. SALMON, Esq.,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: On behalf of the Crippled Children's Hospital Foundation, I would like to submit the following comments concerning the administration of the statutory rules and regulations governing private foundations. Of particular interest to the Crippled Children's Hospital Foundation is the "10 percent public support" test set forth in the current regulation [1.170A-9(e)(3)(i)].

History of Crippled Children's Hospital Foundation

The Crippled Children's Hospital began in 1916, when several Memphis women started a fund raising drive at the request of the late Dr. Willis C. Campbell, world-renowned orthopedic surgeon. Dr. Campbell cited the need in the Memphis and Mid-South area for a convalescent hospital for the care and cure of crippled children.

The Tri-State Hospital School for Crippled Children was incorporated under the laws of Tennessee in February, 1917, as a benevolent and charitable institution. The Hospital officially opened its doors April 15, 1919. The Hospital was originally exempted from Federal Income Tax under the provision of Section 101(6) of the Internal Revenue Act of 1934 and prior acts, now Section 501(c)(3) of the 1954 Code, as stated in a letter dated August 21, 1952.

During widespread polio epidemics in the first part of this century, the Hospital was home to hundreds of children each year. However, last year (1982) the average census of this 55-bed hospital was only eleven (11) patients. From the time the Hospital opened until the late 1950's, the patients were primarily those afflicted with polio. Following the discovery of the Salk vaccine, the Hospital developed into a pediatric rehabilitation facility. However, there were not enough inpatient admissions to warrant the continued operation of a 55-bed hospital. Financial losses of recent years resulted in dilution of the prior endowments that had been received. Projected future losses would have resulted in a complete dilution within three years.

Therefore, in an effort to preserve the Crippled Children's Hospital Foundation and to ensure that its corpus would be available to fund research projects in the area of handicapped children in the future, the Crippled Children's Hospital Foundation closed its Hospital. The Foundation, however, did not change its mission. Its mission is still to lend support to the care, treatment, and research for the handicapped.

New direction

The Board of Managers of the Crippled Children's Hospital Foundation have given many years of dedicated, unselfish service to the handicapped children of the Mid-South. The Board has heretofore determined that their original medical mission had been fulfilled as the need for services offered by their small hospital had greatly diminished. The Board further determined that their future thrust should be to provide funding for medical research to the handicapped in the Mid-South area.

The Board of Managers' initial grant was to the Baptist Memorial Hospital in Memphis, Tennessee, and was a grant of personal property from the Hospital valued at approximately $300,000 which will enable the Baptist Memorial Hospital to meet the needs of crippled children still requiring hospitalization in the Mid-South area.

Additionally, the Board of Managers made a $2.5 million grant to establish a permanent endowment for the Vitreo Retinal Research Foundation in Memphis, Tennessee. The Foundation will conduct clinical research into diseases and surgery of the eye under the direction of internationally-known physicians Dr. David Meyer and Dr. Stephen Charles, who have made dramatic breakthroughs in the treatment of retinal disorders and blindness.

Also, the Crippled Children's Hospital Foundation Board approved a five-year grant of $1.25 million to fund the Unviersity of Tennessee Center for the Health Sciences Rehabilitation Engineering Center. It should be noted that the Rehabilitation Engineering Center was founded in 1974 with $500,000 given by the Crippled Children's Hospital. It is one of two Centers that specialize in mobility and seating systems for handicapped children. University of Tennessee officials had been notified in January, 1982, that federal funding from the National Institute of Handicapped Research had not been renewed for the upcoming fiscal year, and but for the grant from the Crippled Children's Hospital Foundation, that much needed program would have been disolved. Dr. James C. Hunt, UTCHS Chancellor, stated, "the location of the Rehabilitation Engineering Center on our campus with long-term private funding is a major step towards a greater development of the Memphis medical complex as the foremost children's health care cooperative in the world." Dr. Hunt went on to say, "the Crippled Children's Hospital Foundation is continuing its great tradition of service to children, to this region, and to mankind.

Most recently, the Crippled Children's Hospital Foundation and the University of Tennessee Center for the Health Sciences have established a Crippled Children's Hospital Foundation Forum on Child Health which will be an annual scientific meeting to be held in Memphis. The Forum on Child Health represents a two hundred thousand dollar ($200,000) commitment on behalf of the Foundation. The purpose of this annual forum is to improve the quality of life for children. We anticipate the development of a unique scientific meeting which will attract imminent scholars and physicians.

Current tax status

The Crippled Children's Hospital Foundation is a 501(c)(3) organization and prior to the closing of the hospital, it was classified as other than a private foundation. This favorable classification was due to the fact that the organization received more than one-third of its support in each taxable year from gross receipts in the performance of the services and furnishing of facilities at the hospital.

Following the submission of information to the Internal Revenue Service concerning the alteration in the manner in which the Foundation performed its exempt function, the Internal Revenue Service questioned whether we should continue to be classified as a "publicly supported" organization.

The importance of retaining the "publicly supported" organizational classification is to ensure that the Foundation will continue to receive tax advantaged contributions. The Foundation can then continue to fund research grants in the area of handicapped children in fulfillment of its stated Mission. Without this "publicly supported" classification, the Foundation would become stagnant and be unable to increase its exempt function in a time requiring more philanthropic support.

Mandatory "10 percent test of support test"

At this point in time, the Foundation may no longer be classified as a "publicly supported" organization by virtue of Internal Revenue Code Section 509(a)(2)(A), it is further subjected to the mandatory requirements of Section 170(b)(1)(A).

The issue that Crippled Children's Hospital Foundation now faces is one that many of the country's oldest and best-known charitable organizations have also faced. These organizations have been in existence for many years, have performed needed services for the community and helped many people that otherwise would not have been helped. As a result, they became popular charitable organizations.

As a result, many organizations have become sufficiently endowed that large scale public fund raising activities are neither necessary nor practical. However, due to the arbitrary and capricious ten percent of support test and the compounding limitation per contribution (2%) per Regulation 1.170A-9(e)(6), it is possible that our organization could be reclassified as a "private foundation". The result of such a classification would be an irreparable injury and cause a serious reduction in the amount of annual contributions from our donor population.

Recommended solution

Test(s) could be devised to ensure that organizations such as Crippled Children's Hospital Foundation remain responsive to the needs of the general public. As an alternative to the ten percent of support test, a true fact and circumstance test should be used. These tests should look to the other more objective factors set forth in Regulation 1.170A-9(e), such as sources of support. For example, the Crippled Children's Hospital Foundation has received contributions from more than 750 members of the general public over the last four years. The Foundation's 35-person governing body represents the broad interests of the public.

Therefore, we respectfully request that the ten percent of public support test be deleted from the Internal Revenue Code for reviewing the facts and circumstances surrounding an organization to determine whether it is publicly supported. Further it is requested that a true "facts and circumstances test" as listed above be utilized in determining whether or not an organization is "publicly supported".

Respectfully submitted,

CRIPPLED CHILDREN'S HOSPITAL
FOUNDATION,
JAMES T. COX, J.D.,
Executive Director.

CROWELL AND OWENS,
Alexandria, La., June 13, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: In regard to the Hearings that are scheduled for June 27, and June 28, 1983, by the House Ways and Means Subcommittee on Oversight, in regard to private foundations, we would like to submit the following comments.

We represent a private foundation in Louisiana whose major asset consists of common stock in a closely held corporation. The dividend income received from this source on an annual basis is such that it does not equal five percent of the aggregate fair market value of the assets of the foundation. As a result, the foundation is faced with the dilemma of selling some of the assets of the corporation annually in order to avoid an excise tax of 15 percent being applied. We suggest this is manifestly unfair, and is not what Congress intended.

Prior to the Economic Recovery Tax Act of 1981, an excise tax of 15 percent was applied to undistributed income of a private foundation, and undistributed income was defined as the higher of the minimum investment return or adjusted net income. The minimum investment return is defined as five percent of the aggregate fair market value of all assets of the foundation.

The 1981 Act removed the adjusted net income requirement. During hearings in this regard, Congress anticipated a normal rate of return in excess of five percent, and Congress desired to permit private foundations the ability to accumulate some income. In furtherance of the Congressional desire to permit foundations to be able to accumulate some income, the 1981 Act removed the adjusted net income requirement.

The removal of the adjusted net income requirement has severely affected private foundations who do not, in fact, have assets that generate enough income to equal five percent of the adjusted fair market value of said assets. Private foundations who find themselves holding assets that consist principally of minority interests in closely held businesses are severely impacted by the change under the 1981 Act. These foundations are forced to sell these assets to the majority shareholders in the closely held businesses, and the sale is oftentimes at prices that are distressed and do not reflect what could be obtained for the assets if the entire business were sold. Since the private foundation is in the role of a minority shareholder, and further, since the majority shareholder or shareholders have knowledge of the fact that the private foundation must sell some of its stock or be faced with a 15 percent excise tax, the private foundations find themselves in a position of having to accept less money for the stock than it ordinarily could bring in a totally free market place.

To prevent this injustice and inequity, it is respectfully suggested that the definition of undistributed income be changed so that if, in fact, a private foundation distributed all of the income that it received annually (less allowable expenses), it would not be subject to this tax, even if that income was less than five percent of the aggregate fair market value of its assets.

We would appreciate your careful and deliberate consideration of this request.

Respectfully,

CROWELL & OWENS,
By WILLIAM B. OWENS.

BAYLOR COLLEGE OF MEDICINE,
Houston, Tex., June 6, 1983.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, Longworth Building, Washington, D.C.

DEAR MR. CHAIRMAN: Your subcommittee will soon be conducting hearings on H.R. 2589, proposing changes in the tax laws relating to charitable foundations. This legislation could have a most positive effect on the circumstances of a situation involving local ownership of one of our city's daily newspaper, the Houston Chronicle.

This newspaper is currently among the holdings of Houston Endowment, a foundation established in 1937 by the late Jesse H. Jones and his wife, Mary Gibbs Jones. Mr. Jones was one of Houston's outstanding leaders and was instrumental in helping to build the city's sound basis for economic growth and development. He served as Secretary of Commerce under President Franklin Roosevelt and also as head of the Reconstruction Finance Corporation.

Mr. and Mrs. Jones generously directed their philanthropy to the arts, tc education, including medical schools, and to hospitals. They established Houston Endowment as a means of perpetuating their charitable endeavors.

Amendments to the Internal Revenue Code in 1969 include a regulation that charitable foundations divest themselves of wholly owned businesses within twenty years. This requirement would make it necessary for Houston Endowment to sell the Houston Chronicle to the highest bidder by 1989. In this instance, the law would almost certainly result in the sale of the Chronicle to out-of-town interests, and based on the experience of newspaper sales in recent years, to out-of-state owners.

The loss to the community of the Chronicle as an independent, locally owned newspaper could be devastating. The present ownership provides not only an independent voice, but a management that is keenly responsible to, and vitally concerned with, the public interest.

The proposed amendment allowing Houston Endowment to retain ownership of the Chronicle would result in no loss of federal revenue, and I fail to see how forcing its sale to outside interestes could serve the welfare of either our community or our nation.

I would urge the favorable consideration of H.R. 2589 and request that this letter be made a part of the record of the hearings.

Respectfully yours,

MICHAEL E. DEBAKEY, M.D.

INDIANA UNIVERSITY,
DEPARTMENT OF PSYCHOLOGY,
Bloomington, Ind., June 14, 1983.

Mr. JOHN J. SALMON,
Chief Counsel,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I understand that the Oversight Subcommittee of the House Ways and Means Committee will conduct hearings on private foundations on June 27-28, 1983. I would like to submit this letter as part of the official record for those hearings.

I have been the recipient of a research grant from the Foundation for Child Development in the amount of $16,492, for the period from March 1, 1982 to February 28, 1983. The purpose of the grant was to enhance my career development as a research psychologist while providing me with funds to conduct psychological research on children's social and affective development.

This grant has been extremely helpful to me as a young researcher. It has enabled me to conduct preliminary research which I have used as the basis for a larger research grant proposal which has now been funded by the National Institute of Mental Health. The goal of both of these research projects is to come to a better understanding of factors that lead children to become aggressive and antisocial. Had it not been for the funds of the Foundation for Child Development, neither the preliminary research nor the larger NIMH project would have been possible. I believe that this grant from the Foundation for Child Development is one which only a private foundation could support. In this regard, the work of this foundation is extremely valuable to the research community and to society as a whole.

I urge you to recognize the large contributions that private foundations make in our society and to treasure their unique status.

Sincerely,

KENNETH A. DODGE, Ph.D.,
Associate Professor.

EASTSIDE COMMUNITY CENTER OF ROCHESTER, INC.,
Rochester, N.Y., June 7, 1983.

Hon. CHARLES B. RANGEL,
House of Representatives,
Rayburn Building, Washington, D.C.

DEAR MR. RANGEL: It has come to my attention that the House of Representatives' Ways and Means Committee will be holding hearings relative to the role of private foundations. These hearings are scheduled for late June and I would like you to add my voice on the positive side as to the benefits of the aforementioned foundations.

As the executive director of a multi-service social agency (settlement house) in northeast Rochester, I have nothing but praise for the private foundations and their care in making grants to agencies such as mine. The United Way provides the bulk of Eastside's operating budget, but it cannot underwrite capital improvements or provide all the needed program "match money" required by outside state contracts. The private foundations have benefited Eastside's program in many ways over the years and there is the need to have them continue their grant making capabilities.

Eastside has received grants from the following local foundations that have made it possible for our programs, serving all ages of people to continue operation and bring services into the neighborhood.

Gleason Memorial Fund, Inc., 1982, provided funds to install a wood gym floor for use by all age groups.

Daisy Marquis Jones Foundation, 1982, money used by Eastside for part of the "private match" required by NYS Division for Youth contracts.

Frank E. Gannett Newspaper Foundation, Inc., 1982-83, provide funds to establish and maintain a model family day care program serving 150 children, 60 care providers, and 50-60 working parents.

Dorothea Haus Ross Foundation, 1983, grant used as part of the Division for Youth match—this youth program served 1,287 youth and their families during 1982-83.

Over the years these private foundations, and others not cited here have been instrumental in allowing Eastside to maintain and to expand its services and programs to the people. Continued support from these private groups is most important to any agency as this wherever United Way dollars are always limited.

Sincerely,

MARY JANE CRUIKSHANK, *Executive Director.*

EVANS & FROEHLICH,
Champaign, Ill., June 1, 1983.

To: The honorable members of the House Ways and Means Committee.

Re: June 14, 1983, hearings on trends in municipal financing and the use of tax-exempt bonds to finance private activities; H.R. 1635 and similar or related proposals; tax-exempt status of industrial development bonds; and report on tax-exempt small issue industrial revenue bonds, prepared by House Ways and Means Oversight Subcommittee, July 9, 1981.

Our firm has acted as bond counsel, underwriter's counsel, issuer's counsel, company's counsel, and bond buyer's counsel in connection with a number of projects financed with the proceeds of small issue industrial development bonds. We are the first firm located outside of the Chicago metropolitan area to be listed in "The Bond Buyer's Directory of Municipal Bond Dealers of the United States" (the "red book") as bond counsel from Illinois under the heading "Municipal Bond Attorneys of the United States;" and we are, therefore, especially concerned about the impact on smaller communities of proposals to restrict or eliminate the use of small issue industrial development bonds. Our experiences with downstate Illinois municipalities leads us to conclude that a great amount of developmental activity would not take place without the ability of such municipalities to offer the incentives of the tax exemption available through small issue industrial development bonds. Without intending any limitation on the disincentives for development resulting from the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Section 214(e) of TEFRA, severely restricting the use of small issue industrial development bonds for restaurants and entertainment, results in the inability of smaller communities to offer a substantial incentive for downtown and inner city development or redevelopment. It is difficult to structure an inner city or downtown project without giving some consideration to a possible restaurant and/or dinner theater or similar facilities.

In addition to the foregoing, we will very briefly summarize our concerns about selected issues in connection with efforts to restrict or eliminate industrial development bonds, as follows:

1. Is there really a "revenue loss" as stated in the Oversight Committee's report? Let's look at the taxes generated by a $500,000 (typical) project. In Illinois the real estate taxes would be ($500,000 × ⅓ × .07 (for Champaign, Illinois)) $11,667.67. If the project is commercial and generates $1 million in sales, the Illinois sales taxes generated at five percent would be $50,000. Assuming a new employee for $50,000 of project cost (a conservatively high cost), ten employees ($12,500 per year with twenty-five percent deductions) would generate about (10 employees × $12,500 annual salary × ¾ after deductions × .025 Illinois tax rate) $2,343 in State income tax and about (10 employees × $12,500 annual salary × ¾ after deductions × 18% Federal income tax rate) $13,500 in Federal income tax. The total of taxes generated in each year by such a project would be ($11,666.67 + $50,000 + $2,343 + $16,875) $80,884.67. Assuming that a bank in a forty-six percent marginal tax bracket purchased a single bond at $500,000 at twelve percent interest for ten years, the company would pay to the bank $60,000 in interest in the first year (it reduces as principal is paid). The bank would be exempt for about (46% × $60,000 [without even allowing for Section 204(a) of TEFRA allowing only an 85% deduction for the cost of carrying the bond]) $27,600 of otherwise potential taxes in that first year (which applying the President's supply side proposals is available for further lending). The net "revenue gain" from the project in the first year is about $50,000. Of course, over time the principal is paid and the Federal "revenue gain" increases as the exempt interest decreases over time; the properties increase in value and salaries go up, increasing the Federal, State and local "revenue gain." Let's assume that the principal of the bonds concerning such a project is paid off at the rate of $50,000 per year. This means that the average outstanding balance of the bonds over the ten-year period is $250,000 per year. Thus the average Federal income tax "revenue loss" is ($250,000 × 12% (interest on the bonds) × 46% (marginal corporate tax rate, without allowance for the limited deduction to a bank under Section 204(a) of TEFRA)) $13,800. Shown above is that the Federal income taxes paid with respect to such a project are $16,875 in the first year. Even the Federal Treasury can show a net "revenue gain" over the life of the project. In the end, all levels of government derive substantial revenue gains from the industrial development bond process.

Construction projects provide still more revenues. Again looking at a $500,000 construction project, and assuming that $250,000 is for materials and that $250,000 is for labor, the sales tax for materials is about ($250,000 x .05) $12,500. Of the $250,000 for labor, there are further Federal income taxes ($250,000 wages x ¾ after deductions x 20% Federal income tax rate = $37,500) and further State income taxes ($250,000 wages x ¾ after deductions x .025 Illinois tax rate = $4,687.50). Assuming that one-half of take home pay is spent on items subject to sales taxes, further sales taxes are generated ($250,000 wages x ¾ after deductions x ½ disposable on taxable items x .05 tax rate = $4,687.50). The total of extra taxes available as above noted is $59,375 ($12,500 + $37,500 + $4,687.50 + $4,687.50).

2. Are the Wal-Mart, K-Mart and McDonalds industrial development bond projects really "abuses" as some suggest? Such projects may run in the $2.0–$2.5 million range for costs An analysis for those projects would likely show a new job created for each $20,000–$25,000 of project cost. Further, those jobs are available to many who otherwise would have a hard time finding employment. Many of those jobs do not require specialized skills (especially the fast food jobs, now restricted under Section 214 of TEFRA, where the cash registers just show pictures of the items purchased). Conventional corporate means of borrowing are freed for even more projects. Sometimes noted is that "they would have been done it anyway." Depending on interest rates, perhaps not. However, even assuming that "this project would have done anyway," some other project may be done because ordinary corporate means of borrowing are freed from the demands of "this project." Somewhere in the

corporation's developmental chain of activity a project may take place that otherwise might not.

3. The $20,000,000 worldwide limitation, a state limitation, and eliminating land financing will result in the loss of many projects in smaller communities. A $20,000,000 limit on capital expenditures (see Sec. 4 of H.R. 1635) will likely result in company's choosing only the primest sites for industrial development bond financed projects. Small municipalities will not be competitive to attract these very substantial businesses. A state limitation on dollar volume of industrial development bonds will result in cost of issuance increasing such that smaller projects (remodelings and equipping—$100,000-$200,000) will be difficult if not impossible to effect. (Fourteen percent of our files concern projects and issues in smaller communities of $90,000-$200,000.) Land financing is of particular importance to smaller agricultural communities. A number of projects involving the acquisition of farm land are obviously of critical importance to the economic development of smaller communities.

The above very briefly summarizes our concerns about efforts to restrict or eliminate the use of small issue industrial development bonds. The net effect of H.R. 1635 and similar or related proposals, in our opinion, will result in the loss of much needed incentives, allocated at the local level, for economic and community development; and the loss will likely be the hardest on smaller communities. Today, Bone Gap, Illinois and Chicago, Illinois have virtually the same incentives under Section 103 of the Internal Revenue Code of 1954, as amended, available to encourage development and redevelopment. H.R. 1635 and similar or related proposals will encourage only the best locations to be developed. At a minimum, we need more analysis from Form 8038 filings (Sec. 215, TEFRA) to understand the potential impact of any new restrictions on small issue industrial development bonds.

KURT P. FROEHLICH, LTD.

FEDERATION FOR COMMUNITY PLANNING,
Cleveland, Ohio, June 14, 1983.

Mr. JOHN J. SALMON,
Chief Council, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I believe that the Oversight Subcommittee of the House Ways and Means Committee is scheduling hearings on the role of private philanthropy. I am writing to describe by way of example the value of the private foundations in improving human services in our community. We request that this letter be made an official part of the hearing record.

By way of introduction, the Federation for Community Planning is a non-profit voluntary research and planning organization serving the Greater Cleveland, Ohio area. We have a professional staff of 30 or more than 1,000 volunteer leaders working on various community projects, including mental health, child welfare, elderly, indigent health care, mental retardation, employment and day care.

Perhaps the best way to describe the role of a private foundation is to highlight our work over the past eight years in child abuse and neglect. The principal foundation responsible for our work has been The George Gund Foundation. During this time the George Gund Foundation has awarded close to $200,000 to our work alone. In addition it has funded over $100,000 to several other projects which were spun off from our work.

In 1974, The George Gund Foundation granted the Federation an $18,000, one year planning grant to develop a community plan for the coordination of child abuse and neglect services in Greater Cleveland. In 1975 The Gund Foundation also awarded us a $40,000 one year grant to establish a community-wide Council on Child Abuse and Neglect to implement the plan. That Council, made up of professionals and lay leaders from around the Greater Cleveland community, established a comprehensive service delivery system for abused and neglected children.

The Council was reponsible for a 24-hour reporting line on our County Welfare Department. It was also responsible for developing a case management unit which brings together professionals from both the voluntary and public sector to address individual cases of child abuse and neglect. Two years ago that unit won an American Public Welfare Association award.

In 1976 the Council established Parents Anonymous of Northeast Ohio (PANEO), a self-help treatment approach to the problem of child abuse and neglect. Initial funding for Parents Anonymous was from both the George Gund and Cleveland Foundation. Subsequently the Junior League of Cleveland and the Cleveland Chapter of the National Council of Jewish Women joined forces with Parents Anonymous to provide financial assistance and volunteers to establish Belleflower House, a self-help center for parents with abuse problems. PANEO/Belleflower House became an United Way Service funded agency in 1983. Belleflower House was recently featured in a national documentary film on the role of volunteers in the problem of child abuse and neglect.

Another project begun by the Council was the Guardian Ad Litem for Children Project. Lawyers from the private sector were recruited to provide probono legal services to our local juvenile court. Once established, the project was turned over to the Cuyahoga Country Bar Association which presently administers it. Its services were expanded to the domestic relations court two years ago. Presently more than 500 attorneys are working with the project. The Guardian Ad Litem project has also received national recognition because of its ability to recruit vast numbers of volunteer lawyers to provide these services.

At least three pieces of child welfare legislation have been passed by the Ohio State legislatures as the result of the analysis and recommendations of the Council's legal committee, composed of volunteer lawyers from the private sector.

Working with volunteers from the health sector, the Council assistance local hospitals in establishing child abuse protocols. Numerous educational programs were developed by Council committees for hospital medical staff. One of the program, which orients physicians to the problem of child abuse and to their role in identifying and reporting, is on video tape and is currently being used.

In 1977, with the continuing support of the George Gund Foundation, the Council expanded its interest in child welfare to include the social services systems reponsible for providing services to dependent, neglected and emotionally disturbed children. A major planning effort between the voluntary and public system was developing compacts (no-fee contracts) for services for country wards. Using the case management unit previously described, local volunteer agencies commit to the welfare department a designated number of slots to be used exclusively for country welfare children and their families. Services include visiting nurse, homemaker, mental health counseling and psychological testing.

Council volunteers also have engaged in a number of field research projects and system analysis. One such study resulted in rate increase for foster parents. Another study, the documentation of children in custody and a one-year follow up, was used as the basis for the "compact" project just described.

In 1983 the Council designed a community plan for intervention into family sexual abuse of children. This project was based upon a two-year training program established by the Council in which professionals from mental health agencies throughout the community developed their skills in the treatment of sexual abuse. The plan provides for establishing procedures between the public, voluntary and criminal justice systems, comprehensive training of community professionals, and providing direct services to families. Seven voluntary agencies will be cooperating with the public welfare department to implement the project. The plan has just been submitted to local foundations, including The George Gund Foundation, for funding.

Clearly, the scope of work involved in working on child abuse and neglect as a community endeavor is enormous, requiring thousands of volunteer hours, whether those volunteers are paid professionals or community leaders. Without the support of The George Gund Foundation, none of these accomplishments would have been achieved. In summary, the private foundation plays a critical role in our community's ability to build upon its existing resources, to expand and improve its services, and to create new and innovative programs which otherwise would not be available.

Sincerely,

RALPH BRODY, Ph. D., *Executive Director.*

FILM IN THE CITIES,
St. Paul, Minn., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: This letter is to provide information for the Oversight Subcommittee of the House Ways and Means Committee hearings on private foundations, scheduled for June 27-28, 1983. I respectfully request that it be made an official part of the hearing record.

Film in the Cities is a regional media arts center, providing exhibition, education, equipment access and other services to artists and members of the general public who are active and interested in the media of film, video, photography and sound. Since FITC began in 1971, the majority of our contributed income has come from local private and corporate foundations and the National Endowment for the Arts. Over the past twelve years, our foundation grants have totalled roughly $1.1 million.

That support has been crucial to FITC's ability not only to survive but to thrive. Grants from the Jerome and Northwest Area (formerly the Hill Family) Foundations provided the start-up monies for FITC, and Jerome has continued to provide important support for artists' services in the form of felowship grants and equipment purchase. In 1976, when budget constraints forced the public schools in St. Paul and Minneapolis to withdraw their funding for FITC, the Bush and Dayton-Hudson Foundations granted operating money that allowed FITC to expand its services to artists and its exhibition programs. Those grants also provided critical support while FITC developed a linkage with Inver Hills Community College, through which FITC now offers a degree program in film, and from which we derive valuable support. Other foundations have granted funds to help strengthen our internal administration, to expand the number of artists supported with fellowships, residencies, and equipment, to work with other community organizations on cooperative film and education projects, and so on.

Without the generous support we have received from local foundations, FITC would not be the healthy, dynamic organization it is now; it might not even exist. While there may be no one in this country unaware of movies in the form of "Return of the Jedi" or television as expressed by "Dallas," we have found that many people are unaware of the use of film or video or photography or sound as art forms, as media which allow personal creative expression which can stretch our understanding of ourselves and our world. Our foundation donors are aware of those uses of the media. Their support is giving us time to develop a wider public understanding of these relatively new art forms, to attract larger audiences and more individual contributors.

The best of private philanthropy in this country achieves a balance between supporting institutions which provide basic services to a large number of people—e.g., the United Way and major symphony orchestras—and supporting organizations which are trying new solutions to old problems or are experimenting in completely new fields. The best combine the attitudes of a banker concerned for the health of his or her community, and a venture capitalist willing to invest in the untried future. FITC is fortunate to be in a community where the major private donors achieve that balance between the tried and the untried, the safe grant and the calculated risk.

In time, I am sure that Film in the Cities will be known and will be as much a part of the non-profit community as the United Way, the Walker Art Center, or Carleton College. Some other organization, though, will be stretching the limits of an as-yet-unknown art form. That organization will need the vision and support of private philanthropy. We should not require of foundations that they invest only in the problems or solutions of today; new problems and new solutions will need the social investment of philanthropy tomorrow.

Thank you.

Sincerely yours,

EMILY GALUSHA,
Chairman, Board of Directors.

STATE OF FLORIDA,
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, DISTRICT THREE,
Gainesville, Fla., June 16, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: It is my understanding that your Committee is currently interested in the impact of private foundations on a variety of sectors in our economy. I wish to share one striking example of the extraordinary initiative taken by a foundation in support of improved health care delivery for chronically-ill children who reside in a 16 county rural area of North Central Florida. May I request that this text be incorporated into the record of the Committee hearing proceedings.

I am privileged to direct a project entitled Rural Efforts to Assist Children at Home (R.E.A.C.H.) which seeks to improve the functional status of chronically-ill children while reducing the aggregate costs of their care. Over the past 10 years, senior management of the Florida Crippled Children's Program, known as Children's Medical Services, had become increasingly concerned about the high cost of providing appropriate services to chronically-ill children in the counties surrounding the University of Florida's Health Center. The major focus of that concern was related to the lack of available skilled follow-up care for children who received high cost, tertiary care services at the institution and were subsequently "lost" to follow-up because of the lack of transportation and communication in the catchment area (approximately the size of the State of Maryland). An analysis of the situation revealed two major problems. First, some children misutilized the tertiary care center as a primary care provider because alternative sources of primary care were unidentified and/or inaccessible. Second, many of these chronically-ill children who received high cost, intensive services at the tertiary care center were discharged only to be readmitted for a recurrent episode of the same disease (usually at an increased cost) because there was no community-based health care professional to assure their adherence to the therapeutic regimen which would have kept them stable or improve their state of health. In addition, inappropriate utilization of tertiary care institutional services disrupted their normal lives as children by interferring with family and school activities.

As State agency officials, we knew that we could not seek research and development funds to address such a problem from traditional resources, i.e., legislative appropriation. As a consequence, we approached the Robert Wood Johnson Foundation, explained our dilemma, and asked for their support in order that we might validate the problem as we perceived it and test an intervention which we believed would substantially address the problems which we faced. We had explored potential federal sources of grant funds to no avail. The Robert Wood Johnson Foundation's willingness to provide the "risk capital" for our project put us in a position to demonstrate both the cost efficiencies and effectiveness of this non-traditional health care support service. Indeed, the Foundation had to depart from its own normal mode of operation in order to support the implementation of our idea. The Foundation's inherent flexibility was demonstrated in two ways. First, the Foundation broke with tradition and made a grant direclty to a state human service agency to enhance an existing service. Second, the Foundation permitted its resources to be used as "match" for federal funds (Title XIX), with the full realization that they might have substantially diminished control over their contribution as a result of the match. Notwithstanding those potential inhibiting concerns, the Foundation committed itself to a unique, collaborative financing initiative. I must remark, based on my experience in government, that such flexibility is typically not available within the funding mechanisms of public agencies. The Project has been operating and realizing its objective since the Fall of 1980 and is a rather complex, collaborative effort between the State's Medicaid Agency, Crippled Children's Agency, the University of Florida's Colleges of Medicine and Nursing, Shands Teaching Hospital, and county level public health units. Had it not been for the Foundation's interest, support, and flexibility, the R.E.A.C.H. Project would not have been realized. That assertion is based on our unsuccessful explorations of a variety of funding sources in the public sector prior to receiving the Foundation grant, and the recent history of reductions in public financing for child health care which have taken place since the inception of the Project.Those of us who have had the privilege of public service are more acutely aware of the need for non/traditional sources of support to explore non-traditional solutons to public problems.

As a result of reviewing the Project's progress to date, the Governor and Legislature of the State of Florida have committed to an appropriation of continuing resources to support the services designed and demonstrated with the utilization of the Robert Wood Johnson Foundation's funds.

Sincerely,

Steve A. Freedman, Ph.D.,
R.E.A.C.H. Project Director,
Assistant Professor, Department of Pediatrics.

FOREMOST CORPORATION OF AMERICA,
Grand Rapids, Mich., June 1, 1983.

COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

GENTLEMEN: My name is Edward J. Frey. My family, including four children and a Grandchildren's Trust, owns approximately 48 percent of Foremost Corporation of America, a holding company for a group of corporations primarily engaged in providing insurance and services to the mobile home and recreational vehicle markets. About 23 percent of the company's stock is owned by the general public.

Our children are well provided for and my wife and I, therefore, plan to leave our entire estates to charity. However, structuring this bequest has given us serious concern, because of the amounts involved and the fact that the greater part of our estates is invested in one company. We have no single charity or small group of charities in which we are interested to the exclusion of all others. Further, charities change as do economic and social circumstances, and we are reluctant to select, in advance, the charities we wish to benefit and their individual shares.

A possible solution, and one we prefer, is a private foundation, and we wish to adopt this approach. However, because 48 percent of the stock of Foremost Corporation is owned by our family, we believe the strict private foundation rules, particularly that dealing with exess business holdings, are going to create serious problems for our fiduciaries, the foundation, and the company itself.

SUMMARY OF CURRENT LAW

Internal Revenue Code section 4943 prescribes rules forbidding a private foundation to have "excess business holdings". A private foundation will generally have an excess business holding in a corporation if its interest in the voting stock exceeds 20 percent reduced by the voting stock interests of disqualified persons.

Disqualified persons include substantial contributors to the foundation, members of their families, and corporations and other entities in which they have substantial interests. Under these rules, my children and their descendants are disqualified persons to my foundation and will remain so forever.

If the holdings of a foundation become excess after May 26, 1969 because of a gift or bequest such as my wife and I intend, the foundation has five years to reduce its holdings to the permitted level. Any reduction by the foundation itself (rather than by the disqualified persons) may be accomplished only by sales to unrelated parties or by gifts to public charities. A sale of property by a private foundation to a related party (disqualified person) is an act of self-dealing subject to severe taxes.

CURRENT LAW DISINCENTIVE TO CHARITABLE GIVING

Owners of closely-held corporations, such as we are, must weigh two considerations when they plan bequests of stock to charitable organizations. On consideration is the benefit to be derived by the causes that the donor wants to aid. The other is the sound future operation of the corporation. The committee reports on the Tax Reform Act of 1969 apparently assumed that these two considerations are irreconcilable. The implicit premise is that corporations with charities as major shareholders will either serve charities poorly or else compete unfairly against other businesses. I do not believe this is true. The private foundation stock ownership limitation enacted 14 years ago is due for re-examination of both its underlying assumptions and its negative results. I do not believe that foundations are per se undesirable equity owners. A foundation may well be the only tool to carry out the charitable aims envisioned by owners of close corporations.

Charitable causes and corporate goals are not incompatible. Admittedly, charitable bequests reduce estate taxes. However, this is not an anti-social result, but rather the one intended by the framers of the Code, to encourage private philanthropy. The reduction in taxes can eliminate the necessity for a forced sale of the business, frequently within 9 months of death, in addition to increasing the amount going to charity. Bequests to public charities, however, are awkward when substantial sums are involved. The charities must be selected in advance and their shares specified in the testator's will. After the testator dies, revision of the bequests to adapt to changing circumstances is difficult, if not impossible. Further, bequests to public charities will not usually avoid a forced sale of the business. Even if the bequests are satisfied in kind rather than cash, the charities usually will want to dispose of most if not all of the property for diversification, particularly if the property is an interest in a local, sometimes privately-held business. The board of trustees of a major university or hospital does not wish to have the burden of running a business.

The Charybdian alternative is the private foundation. Here, at least, the testator can provide for flexibility in administering the funds in the way which will best meet changing conditions. However, under present law the disposition of the business becomes inevitable because of the excess business holdings rule. Further, since the foundation is not permitted to sell the excess holdings to related parties, the local business usually ends up being sold to incompatible outside interests.

No one denies that certain abuse were possible prior to 1969, when the managers of a foundation were not independent of other major shareholders. However, other provisions in the 1969 legislation remedied the ills caused by conflicts of interest between charitable causes and business interests. Those concerned with self-dealing, minimum investment return, expenditures to influence legislation, and questionable investments were effective deterrents to abuse.

I believe very strongly that owners of close corporations presently do not have a vehicle for post-mortem charitable giving which can adequately serve charitable interests, while protecting local businesses. The result is a significant legal disincentive to charitable bequests. This can be remedied by permitting private foundations to play a greater role.

DESIRED LEGISLATIVE ACTION

I request that you consider favorably complete repeal of the excess business holdings restrictions. Only this approach will preserve the benefits of local ownership of local business and eliminate the necessity for forced sales of such businesses to impersonal outside conglomerates. Repeal will not result in any revenue loss to the government. It will have distinct social advantages, in encouraging increased participation by the private sector in charitable and educational endeavors, to make up the shortfall created by the government's expenditure reductions.

Respectfully submitted,

EDWARD J. FREY.

THE FOOD BANK OF GREATER TARRANT COUNTY,
Fort Worth, Tex., June 30, 1983.

Hon. E DE LA GARZA,
Cannon House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE GARZA: I am writing in regard to the hearings on private foundations held by the Oversight Subcommittee of the House Ways and Means Committee, which are focusing on the private sector and particularly the role of private foundations.

Without foundations, our Food Bank would still be on paper. Our Board incorporated in December, 1981. By September, 1982, we received 501(c)(3) status permitting fund-raising. Within weeks we had commitments from three major foundations which provided $60,000 in emergency start-up funds. We began distributing food in October.

At the end of nine months' operation, we have distributed a million pounds of food to churches and agencies in eleven counties, and we are growing geometrically. Our cost/value ratio was 7¢/$1.50 per # of food in May. More than 40 programs provide a sack of food at the end of the month to needy senior citizens and families crippled by chronic illness. We are making a difference in agencies' food expenditures in these days of re-alignment of funding sources.

The Texas Department of Health has photographed our facility for their training programs. At their request and with our Board's commitment to cooperating on the states, regional, and national levels, our staff will provide training for developing food banks, and our accountability systems will be available to other programs.

USDA surplus commodities through the Jobs Bill are arriving now and we are scheduled to distribute these to churches and agencies in a large area in North Texas. We are ready to accept and distribute surplus from independent suppliers at military commissaries when it becomes available.

Broad-based community support enabled the Food Bank to develop so rapidly and we needed—and still need—the many contributions of time, interest, energy, professional services, and leadership that come from the public, political, business, religious, and other sectors. But the key element in our development and in our results has been the financial support of foundations. We have funds to sign contracts, purchase essential equipment, and hire professional staff. And we have flexibility under the mandates of the foundations.

The foundations don't need to impose protective, non-productive rules on developing programs. Our boards know each other. We all live here, and we're all in this together.

With all due respect to the roles of our federal government, by its nature it must investigate, deliberate, and evaluate, then plan, legislate, and regulate. Sometimes a small local need is competing against a more widespread problem. Foundations can respond quickly and specifically; they maintain an awareness of local conditions that save time in the decision-making process.

Thank you very much for your attention and your careful consideration of the value of foundations.

Sincerely,

Pat Mohler, *Executive Director.*

Enclosure. [Newsletter retained in subcommittee file.]

STATEMENT OF HOWARD R. DRESSNER, SECRETARY, ON BEHALF OF THE FORD FOUNDATION

This statement is submitted on behalf of the Ford Foundation in response to the invitation of the Subcommittee on Oversight of the Committee on Ways and Means to interested parties to express their views about the laws and regulations that govern private foundations.

We are pleased that the Subcommittee on Oversight is holding these public hearings to ascertain how the Tax Reform Act of 1969 has impacted upon foundations. It is our belief that the Act, as modified by subsequent amendments, established a manageable framework for the activities of foundations such as Ford, though, as set forth below, there are several adjustments we endorse.

We recognize that because of the Ford Foundation's size, the consequences to us of current and proposed legislation are not necessarily representative of the other 22,000 foundations that play a major role in the charitable sector. We deem the well-being of the sector as a whole to be of great importance because of the significant part that foundations play in our pluralistic society. Moreover, our own program activities increasingly involve and are enhanced by active partnerships with local and community foundations. Thus, the constraints of laws and regulations upon the growth and operations of other foundations are of natural concern to us.

A. THE FORD FOUNDATION

The Subcommittee has expressed an interest in the activities undertaken by private foundations. It would therefore seem in order to describe briefly the programs of the Ford Foundation.

Throughout its history, the Ford Foundation has had a steadfast commitment toward helping improve the general welfare of society. Currently, this commitment is incorporated, and administratively organized, as six themes:

1. Urban Poverty is our largest program. Under this program theme, we strive to improve the daily lives of the poor and the disadvantaged minorities. Though the program's ambit is worldwide, the principal thrust is in the large American cities. There our programs have an overriding interest in youth unemployment, the public secondary schools, neighborhood crime and arson, inadequate housing, and reducing the incidence and lessening the trauma of teenage pregnancy and welfare dependency. The Program also gives a high priority to the local initiatives of neighborhood organizations.

2. Rural Poverty and Resources addresses the welfare of the world's poor people who are struggling to eke out a livelihood in their villages or other rural settings. This program assigns a high priority to improving the productivity and distribution of land, water and timber resources. Like its urban counterpart, it also emphasizes the self-initiatives and organized efforts of small farmers and the landless laborer. Though some parts of the program reach out to rural places in the United States, it is largely concentrated in the developing countries of Asia, Africa and Latin America.

3. Human Rights and Social Justice. This program constitutes one of the Foundation's earliest undertakings. It is concerned with the struggle to protect individual rights and to advance political and civil liberties. Over time, the span of the program has grown wider and longer, embracing more classes of the disadvantaged in more parts of the world. In the United States, our concern embraces the rights of Blacks, Hispanics, Asian and Native Americans and women of all races. Abroad, it

is attentive to the violation of personal and group rights in closed or discriminatory societies and with the silenced voices of intellectuals. A rising priority is concern for the massive tide of political refugees who seek livelihood and asylum in America and elsewhere.

4. Governance and Public Policy. This program, also among the Foundation's earliest, seeks to improve the structure and functioning of government as measured by the criteria of effectiveness and fairness. It seeks, through support of research and policy institutes, to improve both the factual bases and public understanding of major issues involved in governance. Current priorities concentrate upon the changing distribution of family income, and analyses of the benefits and burdens of income transfers and taxes. It is also concerned with the changing nature of America's intergovernmental structure, the budgetary process, the growing burdens on the judicial system and our system of criminal justice. A newer concern is the potential of voluntarism and of public-private arrangements to accommodate some of the problems caused by federal, state and municipal retrenchment.

5. Education and Culture. This program seeks to advance the standards of fairness and excellence in higher education and the arts. Current priorities include a search for better connections between community colleges—a dominant educational resource for the disadvantaged segments of society—and the more traditional public university systems. Other priorities include support for the social sciences, for libraries and for humanistic scholarship. With respect to the performing arts, we are concerned with discovering and nurturing the talents of minorities and women, and in stabilizing the financial structure of cultural organizations. Abroad, it is concerned with cultural and historical preservation, both as ends in themselves and as a means to improve the process of economic development.

6. International Affairs. This program is concerned with the fundamental questions of peace and security of disarmament and military defense, of the technology and deployment of nuclear weapons systems. It also has the responsibility of seeking ways to improve the international economic order and of promoting better policies with regard to foreign trade, monetary arrangements and the international migration of people.[1]

The funds to support the charitable and educational programs encompassed by the six major themes are derived from the Foundation's endowment, which is currently valued at more than $3 billion. That endowment is invested in a diversified portfolio. Whereas the Foundation's holdings once consisted exclusively of nonvoting Ford Motor Company shares, the Foundation no longer owns any Ford Motor Company stock. The Foundation's level of spending varies from year to year depending, among other things, on the value of its portfolio. The current level of "qualifying distributions" is in excess of $100 million per year and will increase in the next budget period that starts October 1, 1983 because of the recent increase in the value and yield of the portfolio. Since 1950, the Foundation has expended over $5 billion in support of a broad spectrum of charitable, educational and scientific activities.

C. THE ROLE OF PRIVATE FOUNDATIONS

In many ways the programs of the Ford Foundation and other foundations relate to and intersect with programs and social purposes of government. But the role of private foundations is special and distinct and complements that of government.

One of the principal functions served by foundations is to create a testing place and a marketplace for new ideas, many of which are subsequently adopted by the private sector or the government. Earlier generations of foundations proffered such examples as free libraries, medical research, garden cities and university pensions. In contemporary times, many of the examples concern neighborhood and community revitalization, energy conservation and job training arrangements. One example is the Neighborhood Housing Services Program conducted throughout the cities of this country, a program managed by neighborhood residents to channel private mortgage capital toward the rehabilitation and maintenance of modest homes owned by families of low or modest income. That program was initiated by the Scaife Foundation, a private philanthropy in Pittsburgh, and with the subsequent support of other foundation, including the Ford Foundation, the program spread from Pittsurgh to half a dozen other cities. Finally, with government help, it is now in place in 134 cities, a widely acclaimed success.

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[1] The Ford Foundation's current agenda is more fully described in other documents regularly published by the Foundation. These include: Current Interests of the Foundation; the Annual Report; the Ford Foundation Letter, which is published every six weeks and lists every grant made during the interval plus fuller descriptions of major grants; periodic press releases on especially significant grant actions and on new programmatic directions; and various pamphlets and essays. Samples of all these reports are included in this submission.

Private foundations provide a testing opportunity for new ideas not because they are more imaginative or more insightful than the public sector but because they have certain comparative advantages. For one thing, private foundations are well suited to begin with small experiments in a single city or a single neighborhood or a single school, while selectivity often goes against the inherent nature of the legislative process. In addition, foundations can respond with greater speed to opportunities and challenges because of their relatively less cumbersome funding processes.

By the same token, foundations can and often do apply more patient money and are willing to stay with a venture even where the initial results are not encouraging. For example, in the late 1960's the Ford Foundation helped organize the Dance Theatre of Harlem to seek out and train promising youngsters in the balletic arts. The Theatre began inauspiciously in a church basement, with uncertainty about student enrollment. Because of the long and arduous training involved, the results were slow in coming as was support from other funding sources. Gradually, over a 15 year period, the Dance Theatre evolved into a nationally recognized success that brought pride to a major community and self-fulfillment to a generation of gifted young.

Finally, foundations have a greater willingness to take risks. Of course, no responsible foundation would knowingly embark on a venture without some probability of a productive outcome. But the willingness to assume greater risks often yields particularly good results. In addition, sometimes the initial perception of degree of risk proves exaggerated. Among the most impressive outcomes of the Neighborhood Housing Services Program was that the threshold of "bankability" was lower than had been previsously thought by experienced lenders. Under neighborhood supervision, the loss rate of small mortgage loans proved so favorable that local institutions were able to liberalize their rules.

By virtue of their comparative advantages and their relative independence, private foundations play other critical roles. For one, they act as catalytic agents to bring together the resources of all sectors to bear on particular societal problems and needs. For example, the efforts of the Ford Foundation, and subsequently the Local Initiatives Support Corporation, have led to the establishment of effective coalitions of the business community, community-based organizations and the public sector to address the housing and business needs of low-income communities in cities throughout the country.

Foundations also serve as illuminators of major isues that are before the public and the government. By supporting non-partisan research and scholarship and the dissemination of diverse and responsible views, foundations increase public understanding of such complex issues as national security and nuclear policy.

In sum, we are suggesting not that private foundations are uniquely virtuous, but that they have a set of capabilities that a democratic policy requires and that others cannot readily supply.

D. PROPOSED STATUTORY CHANGES: THE CONABLE BILL

As noted earlier, the Tax Reform Act of 1969 and the regulations promulgated thereunder have provided a manageable framework for the activities of foundations, but compliance with certain rules, such as those dealing with expenditure responsibility, has not been without administrative burdens (especially for smaller foundations). For that reason, we favor the amelioration of these rules along the lines of H.R. 3043, a bill recently introduced by Hon. Barber B. Conable.

H.R. 3043 offers relief from four burdensome regulatory controls. First, it provides a more workable definition of "disqualified persons." By shortening the chain of lineal descendants of substantial contributors who came within this term, the bill relieves foundations of the obligation of keeping track of the business dealings of a geometrically increasing number of people who, generally, are not "insiders." (Insiders such as officers or trustees are "disqualified persons" by reason of being "foundation managers.") Second, it alleviates the so-called "tipping" problem by permitting foundations to rely on official IRS determinations of prospective grantees' tax-qualified status. This obviates complicated pre-grant investigations that in the vast majority of cases result in the conclusion that the proposed grant will not affect the grantee's public charity status.

Third, H.R. 3043 provides for a $15,000 threshhold below which the expenditure responsibility requirements do not apply. This will reduce the administrative burden on foundations, such as the Ford Foundation, that currently make grants of less than $15,000 to organizations that are not public charities and it will also enable many smaller foundations to begin to make such small yet worthwhile grants. Finally, H.R. 3043 would amend the existing multi-tier system of tax penalties by providing relief with respect to the first level of penalty where there is a determination that the violation in question was due to a good faith error and where the violation is corrected within the statutory period.

The Conable bill also addresses another matter of concern to the charitable community: the differential tax treatment under current law between contributions to private foundations and support to public charities. This is a matter deserving Congressional attention. The lack of uniformity in the rules relating to lifetime gifts to private and public charities, coupled with the "excess business holdings" provisions of the current tax law, may have had the effect of sharply reducing the birth rate of new foundations.

The entry of new foundations has a broader significance for society than the dollars they add to the philanthropic base. New foundations have another important attribute: they begin with clean slates, free of the past commitments of older foundations. They launch fresh starts, serve different interests, bring fresh perspectives, and may discover opportunities missed by others. Thus they reinforce the pluralistic nature of philanthropy, so essential to a democracy like ours.

The tone of the Conable bill is as heartening as its specific reforms. There is explicit recognition of the beneficial functions of foundations and of the fact that these functions can best be performed in a climate that provides encouragement to their growth and initiatives.

That leap of faith must be matched by foundations with an augmented commitment to accountability. That commitment, it goes without saying, should include full and accessible public reports and records of grants and investments, of programs and procedures, information that should go beyond formal compliance with IRS rules.

But openness, however necessary, is not a sufficient test of accountability. If foundations are to justify their position and functions in America's structure of governance, accountability has to take a higher meaning. The report to the public must be more than financial statements and chronicles. It has also to be a testimony that tells, and tells credibly, of purpose and accomplishment. The ultimate accountability of foundations is to demonstrate to everyone that because they exist, society is a better place for more people.

FORT WORTH INDEPENDENT SCHOOL DISTRICT,
Fort Worth, Tex., June 13, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: This letter is in support of the role of private foundations as providers of services, resources and assistance to public institutions such as school systems.

As you know, the budget realities of the 1980's have caused severe and serious dislocations in the capacity of public schools to meet their obligations to their constituents. This is particularly so in the urban centers of the country where the bulk of the poor and minority students are enrolled. Urban school systems are hard put to maintain a minimum program of educational services and simply cannot afford to engage in those crucial developmental, planning, and retraining activities that spell the differences between long term success or continued failure.

We, in Fort Worth, have been blessed with the support of the Sid W. Richardson Foundation over the past two years as we have mounted a major effort to raise the achievement and academic levels of our students. The Sid W. Richardson Foundation has provided support in the following important areas:

1. With a five (5) year grant to engage in the development of a site based management effort to place key decision making power in the hands of building personnel and local citizens. This is consistent with emerging research on effective schools and has already provided dividends to the children of Fort Worth.
2. By providing resources for and consultative assistance in the training of teachers and administrators in: (a) Outcome based instruction/mastery learning; (b) Clinical supervision; (c) Evaluation; and (d) Montessori Education.
3. By providing resources such that we can visit model programs and can invite key educators to consult with the Fort Worth Schools.

The provision of several hundred thousand dollars annually is crucial to our emerging success. These dollars, not available by any other avenue, are the seed money for our planning-development effort and promise to have a major impact on the education of over 65,000 students in Fort Worth.

Additionally, what with categorical and negotiated restrictions on normal fiscal resources, the availability of unrestricted dollars allows an impact for in excess of the dollar amount itself. For these and numerous other reasons, we urge that the Congress recognize, commend, and permit the extension of the role of private foundations as key contributors to improvements in our society.

Sincerely,

I. C. CANDOLI, *Superintendent.*

FORT WORTH SYMPHONY ORCHESTRA,
FORT WORTH CHAMBER ORCHESTRA, FORT WORTH SYMPHONY "POPS,"
Fort Worth, Tex., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: We have been advised that the Oversight Subcommittee will be considering the subject of private foundations in hearings later this month. On behalf of the Fort Worth Symphony Orchestra Association and as a private citizen, I want to register my enthusiastic vote of support for the role private foundations play in American society and, specifically, in the growth and development of our orchestra.

As you may be aware, American arts organizations enjoy only a fraction of the direct governmental subsidy available to similar organizations throughout the industrialized world. The original 1913 legislation enacting the Internal Revenue Code provided a mechanism and a powerful incentive for the channeling of private wealth into educational, artistic, and philanthropic enterprises. Such huge national foundations as the Ford Foundation illustrate the effective role which these private institutions can play in the growth and development of cultural institutions over a period of decades. Their matching support of local initiatives for the symphony orchestra endowment campaign in the 1960s may be the largest single explanation for our nation's wealth of great orchestras.

The Sid W. Richardson Foundation of Fort Worth has played a particularly important role in the history of our orchestra, providing not only much-needed general support of our operations, but also acting as a catalyst for our most important recent initiatives. Beginning in 1977, the Richardson Foundation provided seed money to upgrade musicians' salaries and build a string quartet within our larger orchestra. Brass and woodwind quintets were developed in succeeding years, each acting as an outreach ensemble for the symphony.

By 1980, salary support had enabled us to build a 34-piece chamber orchestra which now tours throughout the state of Texas and in recent years to Mexico, New York's Carnegie Hall, and the People's Republic of China. Perhaps most important of all, our core orchestra has set a high standard of professional playing for our entire 93-piece ensemble and enabled us to expand our season to provide full-time employment to outstanding musicians. A grant for computer equipment in 1979 has added a new dimension of professionalism to our business activities and has paid for itself many times over in increased staff efficiency.

Without the stability and positive influence provided by the Richardson Foundation, the Anne Burnett and Charles D. Tandy Foundation, the Pangburn Foundation, the Union Pacific Foundation, and the McFadden Trust, the challenging task of keeping an orchestra artistically strong and financially healthy might well be unachievable. Let me offer my heartfelt endorsement of those and similar private foundations and the good works that they do.

Sincerely,

ANN KOONSMAN, *Executive Director.*

STATEMENT OF THOMAS R. BUCKMAN, PRESIDENT, THE FOUNDATION CENTER

Mr. Chairman, my name is Thomas R. Buckman. I am President of The Foundation Center, a national clearinghouse dedicated to the purpose of providing the public with information on private foundations and their grantmaking programs.

In your Subcommittee hearings on June 27 and 28, at which I was present, The Foundation Center was mentioned frequently by witnesses as a source of statistics on active grantmaking foundations in the United States, and as a place where any citizen may go to find out basic facts about every private foundation that gives away grant money to nonprofit organizations.

As I listened to the testimony on those two days, I felt that it would be helpful for the Committee to know more about the Center's dissemination of private foundation information throughout the land and how we count active grantmaking foundations. That is why I am filing this statement with the Committee. I request that it be made a part of the record.

Before describing The Foundation Center further, I wish to emphasize that the Center, headquartered in New York City, is a modern information analysis agency with a professional staff of information and editorial specialists. Over the last 25 years, the Center has established a reputation as the source of the most current and complete information on private grantmaking foundations. Every year we purchase from the IRS microfilmed copies of all private foundation information returns (Form 990-PF) filed, as well as a computerized extract containing private foundation data from the IRS Exempt Organization Master File. This data is verified against copies of the actual returns filed, expanded, and analyzed on the basis of information supplied by foundations, and made available to the public through our free library network and our publications. The Center uses up-to-date computer technologies, and for ten years has been a leader in providing information on computer networks to any point in the United States.

BACKGROUND

The Foundation Center is a nonprofit fact-finding organization with the principal mission of gathering and disseminating information to the public on private foundations and the grants they give.

The Center was established in 1956 at the initiative of private foundation officials who saw a continuing need for public inforamtion and orientation about foundations and their grantmaking programs.

In the 1970s, a large number of foundations wished to reemphasize their dedication to public knowledge and accountability, and so the list of original sponsors grew from 20 in 1971 to 358 today, representing grantmaking organizations all over the United States.

The Center also supports itself through sales of its publications and fees for special services, such as custom computer searches. In 1982, over 50 percent of the annual operating budget was covered by earned income.

We carry out our mission through a library network, public education activities, and a publishing program.

NATIONWIDE INFORMATION NETWORK

The Center's library network consists of free reference collections in public libraries and other community organizations in 130 locations and, in addition to these, there are four larger libraries operated by the Center itself in Washington, D.C., New York, Cleveland, and San Francisco. There is at least one basic information collection in every state, and sometimes several. At every location, there is a basic shelf of Foundation Center reference books describing every active grantmaking private foundation in the United States, some 22,000 in number. The thousand largest are described in detail, 3,000 others are described in standard Directory entries, and there are basic entries for 18,000 mainly small, local foundations.

CENTER DISTRIBUTES IRS INFORMATION RETURNS

One hundred three of the public reference points also contain collections of IRS information returns on private foundations. In most states, the collection is limited to returns for foundations within the state, but some have returns for adjoining states as well. The New York and Washington, D.C. offices contain returns on film for the entire country, not only for the most recent year but for earlier years as well. Through the Center libraries, copies of any of the returns are available to any network library upon request.

The Center purchases several complete national sets of returns for its own editorial use and for distribution to the free reference colelctions each year, thus ensuring convenient public examination throughout the country. Annually, the Center buys filmed returns from IRS costing about $70,000 for this purpose.

The reference collections also include many handbooks, technical assistance guides, and general books from many publishers that are of interest to grantseekers.

NUMBER OF NETWORK CITIES INCREASING

The Center's library network has grown from 90 collections in 1980 to 130 in 1982. We are actively expanding the network and welcome inquiries from those who would like to have a foundation reference collection in their local communities.

People who cannot travel to a reference collection may order returns by mail. Key pages from the IRS return of any foundation which does not publish an annual report will be sent at a charge of $2.00 per foundation.

The additional materials available in our network collections, such as directories, grants lists, press clippings, handbooks and other information give the grantseeker perspective well beyond the information required to be reported to the IRS. Copies of our handbook, "Foundation Fundamentals," which provides a step-by-step guide to identifying foundation funding sources, are available in every library. [Copies of this handbook are attached for the Committee.] In many collections, staff members provide free orientations for the public on funding research, as well as providing specific reference assistance to users of the collection. Visitors to our network collections often learn not only about the funding process, but also about other matters relating to the management of their own organizations, and the world of nonprofit human services in general.

SEVERAL HUNDRED THOUSAND USE CENTER MATERIALS

The number of persons using The Foundation Center's materials and services each year numbers several hundred thousand. The number using the IRS returns, through direct examination of the returns which we distribute around the country or through the data from the IRS forms which appear in our publications, is equally large.

The number of visitors to our 134 reference points or Center-operated libraries reaches about 160,000 per year. In addition, many other libraries purchase our publications and make them available to the public. Our records show that upwards of 1,200 libraries in the United States, apart from our own affiliates, hold copies of our publications. The number of copies of Foundation Center publications published and available for use or sale in 1982–83 comes to about 90,000 copies.

In 1982, our own library staff members addressed people at 97 national conferences, and these sessions were attended by 5,290 individuals. We sent informational materials to 196 additional conferences attended by 22,000 people. Our staff conducted 339 orientations and educational seminars lasting from two hours to a full day in 1982, and we responded to about 30,000 mail or telephone inquiries about private grantmaking. In addition, we sent out 1.3 million mailing pieces in 1982, giving information about The Foundation Center and the availability of our publications.

TOLL-FREE NUMBER AND COMPUTER ACCESS

We maintain a toll-free number, (800) 424–9836, which anyone may use to call our Washington, D.C. office for the location of the nearest Foundation Center collection or for other information about our program.

Three of our major books are also available through personal computer terminals connected by telephone lines to the Lockheed DIALOG system. Anyone using a terminal may access the files from their own office locations. Hundreds of organizations use the service, including Federal agencies such as the Library of Congress.

Although the neophyte fundraiser may never have heard about The Foundation Center at the outset, he or she cannot avoid hearing about the Center after a few days of serious work in foundation fundraising, and can then begin using our resources.

Mr. Chairman, further information about The Foundation Center and its work is available in the Center's Annual Report, which is available to anyone requesting it. Our address is: The Foundation Center, 888 Seventh Avenue, New York, New York 10106. (A copy of the Annual Report is attached.)

For the past two years, we have mailed our Annual Report to all United States Senators and Representatives in Congress, together with a list and map showing the locations of our private foundation information collections in each state. This year, Senator Howard Baker and Representative Barber Conable have written covering letters to their colleagues in the Senate and the House calling attention to the locations of these information collections.

NUMBER OF ACTIVE GRANTMAKING PRIVATE FOUNDATIONS

Mr. Chairman, as the Committee considers the regulation and operation of private foundations, it is important that it have as clear an understanding as possible of the total number of foundations and the rate at which new foundations are being created. The confusion which surrounded this point at the hearings can, I believe, be dispelled by a careful look at the available data. IRS data show that the total number of organizations filing annual private foundation returns has increased steadily in recent years and now totals somewhat more than 27,000. However, it is important to recognize that this total includes not only active grantmaking and operating foundations, but also a substantial and growing number of "burned-out" public charities. These are organizations which were intended to operate as publicly-supported charities, but which have failed to attract the required public support and have, therefore, been classified under the technical tax law definition as private foundations. The important point here is that these organizations were not intended to, and never will, fulfill the philanthropic function commonly ascribed to private foundations. Our best estimate is that the IRS data include over 4,000 such organizations. Moreover, the number is continually increasing; every two weeks the Internal Revenue Bulletin contains a new list of burned-out public charities which have been reclassified as private foundations.

While these burned-out public charities are appropriately subject to the selfdealing rules and other regulatory restrictions applicable to private foundations, it is important to exclude these organizations in assessing the health of the foundation community and, particularly, in evaluating changes in the foundation "birth rate."

Because The Foundation Center's data do exclude these burned-out public charities, I believe they provide the most accurate gauge of changes in the foundation birth rate.[1]

The Foundation Center's figures over the past several years show very slow growth in the number of active grantmaking foundations. Our figures are carefully compiled each year from a detailed examination of the private foundation extract from the Exempt Organization Master File, which we acquire from the Internal Revenue Service. As stated earlier, Center staff verify the figures against copies of the actual returns filed to ensure keyboarding accuracy.

The resulting figures are published in the introductions to our National Data Book together with a brief profile of every active grantmaking foundation which we have found on the tape extract received from the Internal Revenue Service.

Here from the latest, 7th Edition, are the numbers resulting from our analysis, including the criteria for excluding non-grantmaking foundations:

The National Data Book is the most comprehensive listing of currently active grantmaking foundations in the United States. The Seventh Edition contains entries for 21,906 private foundations and 182 community foundations which awarded grants of $1 or more during the reporting year. The foundations included in this volume hold combined assets of $48.2 billion and awarded $3.4 billion in grants during the year. Eighty-four percent of this universe (18,631 foundations) awarded less than $100,000 each in grants during the year, accounting for 9.8 percent of all foundation giving. For many of these smaller foundations, the National Data Book is the only published source of information.

The entries for this publication are derived from the Internal Revenue Service's computer files of the information returns (Forms 990-AR and 990-PF) filed in 1979, 1980, and early 1981 by organizations classified as private foundations by the IRS. To ensure keyboarding accuracy, Foundation Center staff has verified approximately 75 percent of the listings against copies of the original information returns filed with the IRS. The Center also gathers and adds to the database information on community foundations who do not submit the same information returns as private foundations and therefore are not included in the primary IRS listing.

The complete national file of private foundations contains records for 27,264 organizations. Of this group, 682 organizations do not appear in this publication because current data was not available on the IRS tape or the foundation had terminated. An additional 4,494 organizations are not listed because they did not award any grants in the year of record. Although the Center does attempt to verify the accuracy of IRS keyboarding on specific data elements, we do not attempt to verify whether all known private foundations are listed on the IRS tape. The Center also does not update fiscal data for any foundation since this file represents the assets and grantmaking activities of foundations during a specific IRS year of record.

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[1] Because our database is used primarily by grantseekers, we also exclude operating foundations which make no grants. While this means that our total understates the number of active private operating and nonoperating foundations—probably by about 1,000—this exclusion does not affect the validity of our data on the foundation birth rate since the number of operating foundations appears to be increasing quite slowly.

This book has been published since 1972. Here following are the figures for the successive years:

Source	Number of active grantmaking foundations	Total combined assets (in billions)	Total grants (in billions)
National Data Book, 1972 (1st edition)	(1)	(2)	(2)
National Data Book, 1974-1976 (2d edition)	21,877	$30.1	$1.9
National Data Book, 3d edition (1975-1977)	21,447	34.8	2.2
National Data Book, 4th edition (1979)	22,152	35.3	2.3
National Data Book, 5th edition (1980)	22,484	37.2	2.5
National Data Book, 6th edition (1982)	22,535	41.6	2.8
National Data Book, 7th edition (1983)	21,906	48.2	3.4

[1] Approximately 25,000.
[2] Not available.

EFFECTS OF INFLATION

In the forthcoming Foundation Directory Edition 9 (September 1983), which includes 4,063 of the largest foundations, we have noted the effects of inflation on foundation dollars. These 4,063 foundations account for about 96 percent of all assets of active grantmaking foundations, but their real value in constant dollars has weakened.

We report in the new Directory as follows:

Foundation assets continue to decline in real value as the number of foundations with portfolios above $1 million and annual giving above $100,000 increases. In 1981 the current dollar value of assets of qualifying foundations was $47.5 billion, but in constant dollars only $17.4 billion or 30.7 percent less than the constant dollar value in 1972. This occurred despite a 62 percent increase in the number of qualifying foundations from 2,533 in 1972 to 4,063 in 1981. The increase in the number of qualifying foundations is explained by three factors: (1) improved access to information about foundation entities, (2) newly established foundations since 1972, some of them very large, or foundations established earlier but receiving their substantial assets since 1972, and (3) by market conditions which have resulted in appreciated assets in current dollars but are sharply depreciated when converted to constant dollars.

Average gifts received in constant dollars (i.e., 1967 dollars) for each of 2,533 foundations in 1972 amounted to about $232,000. In 1982, the same calculation showed an average addition to corpus of $157,343 in constant dollars. The average grant payout in constant dollars per year for each foundation ($488,000 in 1972; $314,000 in 1981) has declined 35.6 percent.

To be effective supporters of organizations in the nonprofit voluntary sector, foundations must maintain their giving power. Inflation, government regulation of minimum annual payout, and limitation of deductibility when new gifts to endowments are made all tend to decease the ability of foundations to give today and still add to their assets and their grantmaking capability in the future. Inflation makes the greatest inroads, but regulation as an added factor creates a hardship, especially for independent foundations, the largest group surveyed: at the same time that inflation impairs the real value of assets and grants; independent foundations cannot attract a sufficient number of new dollars for endowment to counterbalance the loss. Payout requirements may leave little opportunity for greater investment, although this has been alleviated somewhat by the new payout requirement in ERTA, 1981. Still, regulation inhibits growth and discourages formation of new independent foundations.

Thank you, Mr. Chairman, for the opportunity to file this statement as part of the record of your hearings on private foundations.

STATEMENT SUBMITTED ON BEHALF OF THE FRICK COLLECTION IN NEW YORK CITY, THE ISABELLA STEWART GARDNER MUSEUM IN BOSTON, AND THE PHILLIPS COLLECTION IN WASHINGTON, D.C.

This statement addresses the problem by which the Tax Reform Act of 1969 (the 1969 Act), as interpreted by the Treasury Department in its revised regulations, discriminates against certain museums by treating them as private "operating foundations" rather than as "publicly supported" organizations. As a result of being relegated to private operating foundation status, the museums concerned are subjected to certain inequities, the most serious being the imposition of the two percent excise tax on their investment income and the difficulty in obtaining grants from other foundations. This in turn adversely affects their ability to carry out their exempt function of educating the public. Legislative relief is needed.

The problem arose because the Treasury Department, after the enactment of the 1969 Act, revised its regulations defining publicly supported organizations (under section 170(b)(1)(A)(vi) of the Internal Revenue Code) to require that a museum normally receive at least 10 percent of its support from the general public before it can be considered as qualifying under the "facts and circumstances" test as a publicly supported organization. While many museums meet this 10 percent test, a significant number cannot do so, including some of the most outstanding art museums of our country. Examples of well-known art museums which face this problem are The Phillips Collection in Washington, D.C., The Frick Collection in New York City, and the Isabella Stewart Gardner Museum in Boston.

This change in the regulations was made even though there was no change by Congress in the statutory language of the pertinent provision, section 170(b)(1)(A)(vi) of the Code. Thus, a number of art museums which had assumed they would not be treated as private foundations found they were in fact so classified by the Treasury even though no change in the statutory definition on which they had relied was made by the Congress.

Generally, the museums facing this problem were established many years ago, usually by wealthy donors who left them substantial endowments designed to meet their anticipated future needs. Over the years, control of these museums has passed beyond the families of the principal donors so that today their governing bodies are broadly representative of the interest of the general public.

Since the above-named museums provide the same kind of museum services directly for the benefit of the public as do the museums which Treasury treats as publicly supported, such as the Metropolitan Museum in New York City and the Boston Museum of Fine Arts, to name but two, there is a sincere question about the wisdom of subjecting these endowed museums to the penalty of the two percent private foundation excise tax and to the other disadvantages of private foundation status (such as the reluctance of foundations to make grants to other foundations), to which publicly supported museums are not subject.

The Frick Collection offers an example of how the two percent excise tax, when applied to museums, can work against the interests of the public. The Collection is in a building reminiscent of European domestic architecture of the eighteenth century, a striking setting for its internationally famous art collection. It receives about 260,000 visitors a year with a $1 admission charge. Special tours by school groups are encouraged, including groups from the New York area public schools. Monthly concerts of classical music and several lectures each week are offered to the public free of charge. In recent years, with rising costs, the Collection's income from endowment cannot continue to meet expenses and pay the two percent excise tax. It seems inevitable that the two percent tax will do a disservice to the public by causing, for example, curtailment of services, the imposition of an increased admission charge, or broad requests for public support in competition with other charitable organizations.

The Gardner and the Phillips are very similar. The Gardner has annual attendance of about 150,000 and the Phillips has 100,000 visitors a year and neither has an admission fee. Both museums have world-renowned collections, offer concert series and lectures and both encourage school group visits.

It is inequitable to differentiate for tax purposes between museums which are treated as publicly supported and those which were fortunate enough to be richly endowed and thus are not heavily dependent upon public support. Essentially, the test should be based on services rendered to the public rather than on the source of funds so used. Application of the two percent excise tax nesessarily reduces the funds available to the privately endowed museums to continue to provide their public services, thereby defeating the public's interest.

THE GARRETT-WILLIAMSON FOUNDATION,
Newtown Square, Pa., July 1, 1983.

Re Private Foundations.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, House Ways and Means Committee,
Rayburn House Office Plaza, Washington, D.C.

DEAR MR. RANGEL: I am President of the Board of Managers of Garrett-Williamson Foundation, a medium-sized ($10 million plus) private foundation located in Newtown Square, Pennsylvania. From 1969–1982, Garrett-Williamson was an operating foundation; however, the Board is currently considering changing its status and lending support to other charities.

One of our Board members, Francis D. Keen, attended the hearings before your Subcommittee on Oversight on June 27th and 28th. Mr. Keen was particularly impressed with the testimony of Norman B. Ture, Chairman, Institute for Research on the Economics of Taxation, on Tuesday, June 28th.

A substantial portion of Garrett-Williamson's assets are currently in real estate on which the cash flow is less than 5% of the market value of the property. The Board of Managers believes that due to its size and strategic location, the investment in this property is superior to any alternative available to the Foundation in terms of building capacity for distribution to charities.

As a private foundation, Garrett-Williamson Foundation will find it difficult to comply with Code Section #4942 in its present form, and we urge that it either be repealed or that it should apply with respect to distributions over a far longer period than a single tax year.

Repealing or changing Code Section #4942 would permit Garrett-Williamson Foundation to expand its future charitable distributions significantly.

Very truly yours,

JAMES M. UMSTATTD, *President.*

HELLER, EHRMAN, WHITE & MCAULIFFE,
San Francisco, Calif., June 28, 1983.

Hon. CHARLES B. RANGEL,
Chairman, House Subcommittee on Oversight of the Committee on Ways and Means,
Washington, D.C.

DEAR REPRESENTATIVE RANGEL: We represent The William G. Gilmore Foundation (the Foundation), a private charitable foundation. On behalf of the Foundation, this letter proposing an amendment to the private foundation rules is submitted for inclusion in the record of the hearings on that subject before the House Subcommittee on Oversight of the Committee of Ways and Means. The comments and proposal made herein are directed toward a narrow issue: the statutory definition of "disqualified person" and its relationship to the excess business holdings rules of Internal Revenue Code Section 4943.

FACTUAL BACKGROUND

The Foundation is a charitable corporation created in 1953 by William G. Gilmore, then the sole shareholder of Gilmore Steel Corporation (Gilmore Steel). During the period 1953 to 1962 Mr. Gilmore contributed 22,100 shares of Gilmore Steel common stock (Gilmore common), then valued at $325,000, to the Foundation and made gifts to it of other property. After Mr. Gilmore's death in 1962 the Foundation received an additional 250,000 shares of Gilmore common, then worth $3,500,000, pursuant to his will. Prior to and for some time after the passage of the Tax Reform Act of 1969 the Foundation owned more than 50 percent of the outstanding Gilmore common. This percentage was gradually reduced to 37 percent of the outstanding Gilmore common by reason of Gilmore Steel issuing additional shares and by reason of distributions of Gilmore common by the Foundation to unrelated public charities. As the result of a very recent tender offer by Gilmore Steel, the Foundation now owns 171,000 shares, or approximately 31 percent of the outstanding Gilmore common. The Gilmore common is the only authorized class of voting stock.

Gilmore Steel contributed a total of $615,000 in cash and property to the Foundation between 1953 and 1964, thus becoming a substantial contributor and a disqualified person with respect to the Foundation under the private foundation rules enacted in 1969. Gilmore Steel has not made any contributions to the Foundation since 1964. The Foundation does not expect to receive any further contributions from Gilmore Steel because since 1964 Gilmore Steel has made whatever charitable contributions it makes directly to charities other than the Foundation.

Gilmore Steel is and has been an extremely closely held corporation. Its present shareholders and their approximate percentage shareholdings are:

	Percent
The Foundation	31
Midland-Ross Corp.	27
Mrs. William G. Gilmore and family (all disqualified persons)	19
Gilmore Steel ESOP	11
Oregon Community Foundation	8
Employees and related parties	4
Total	100

Since the early 1970s Gilmore Steel and the Foundation have attempted to sell Gilmore Steel, to sell the Foundation's shares, to sell newly issued shares to new equity investors, or to have a public offering of Gilmore common. To this end Gilmore Steel and the Foundation originally engaged Goldman, Sachs & Co., and later Dean Witter Reynolds Inc., to explore these possibilities. Gilmore Steel and the Foundation were advised that it would not be practical to have a public offering of Gilmore common, that it was unlikely to find a purchaser for the Foundation's shares (then being a minority interest), and efforts to find an "equity partner" which would result in the infusion of capital have been unsuccessful. Gilmore Steel and the Foundation have continued these efforts to the present date and intend to continue these efforts in the future.

Midland-Ross Corporation (Midland-Ross), with headquarters in Cleveland, Ohio, is a publicly held corporation, with its stock traded on the New York Stock Exchange. In 1969 Midland-Ross constructed a plant on Gilmore Steel's property at Portland, Oregon, for the purpose of supplying ore for the electric furnaces in Gilmore Steel's newly constructed plate steel mill. Prior to that time there had been no relationship between the two companies. Agreements made in 1972 effectively granted Midland-Ross an option to purchase 21 percent of the outstanding shares of Gilmore common, which it exercised in 1978, thereby becoming a 21 percent owner of Gilmore common. Midland-Ross also sought and obtained a preemptive right to maintain an ownership interest of 20 percent or more because it desired to report its ownership of Gilmore Steel on the equity accounting basis.

Neither Gilmore Steel nor the Foundation own any shares of Midland-Ross, and to the Foundation's best knowledge no other shareholders of Gilmore Steel own any shares of Midland-Ross. Solely by operation of Code Section 4946(a)(1)(C), Midland-Ross became a disqualified person with respect to the Foundation because it owned more than 20 percent of Gilmore Steel, a substantial contributor to the Foundation. Therefore, the stockholdings of Gilmore common by Midland-Ross must be aggregated with those of the Foundation and other disqualified persons for the purposes of the excess business holdings rules of Section 4943. Midland-Ross has never made a contribution to the Foundation.

EFFECT OF THE CURRENT DEFINITION OF "DISQUALIFIED PERSON"

As described above, Midland-Ross is a disqualified person with respect to the Foundation solely through the application of Section 4946(a)(1)(C). That section provides that the owner of more than 20 percent of a corporation (or other entity) which is a substantial contributor to a private foundation is a disqualified person with respect to that foundation. The legislative history of this section does not reveal any specific reasons for the choice of more than 20 percent ownership as the boundary line between those stockholders of a substantial contributor who are or are not disqualified persons.

It is clear that the definition of "disqualified person" in Code Section 4946(a) was intended to include persons who control a private foundation (through position or contributions) and related entities through which those persons might act. The 20 percent rule was apparently based on the assumption that an owner of a significant interest in a substantial contributor is responsible for and can control the relationship between the private foundation and the substantial contributor, and, therefore, should be treated as a disqualified person. While this assumption may often be true, its formulation in Code Section 4946(a)(1)(C) is clearly overbroad.

For example, a substantial contributor is often a closely-held corporation. A 20 percent stockholder will have no significant ability as a stockholder to control the corporation's actions if the remaining 80 percent is owned by a person (or persons) with contrary inclinations. In addition, a person or entity that becomes a substantial contributor remains a substantial contributor forever, so Code Section 4946(a)(1)(C) treats as a disqualified person every 20 percent owner, regardless of the owner's interest at the time the entity became a substantial contributor and irrespective of the entity's dealings with the foundation after the owner acquired a 20 percent interest. There is no reason to presume that every 20 percent owner of a substantial contributor is so closely related to the foundation or other disqualified persons as to warrant treatment as a disqualified person. And, with respect to the excess business holdings rules, the current definition has significant effects that are contrary to the intent of those rules.

Under Code Section 4943(c)(2), a private foundation is allowed to own 20 percent of a corporation's voting stock, reduced by the percentage of voting stock held by all disqualified persons. But if the private foundation and its disqualified persons own 35 percent or less of the voting stock and if the corporation is effectively controlled by non-disqualified persons, then the foundation may own up to 35 percent of the voting stock (again reduced by the percentage held by disqualified persons). Clearly, Congress felt that the dangers posed by a private foundation's stock ownership and consequent involvement in a business enterprise are significantly reduced if the business is controlled by independent parties.

Yet the interaction between Code Section 4946(a)(1)(C) and Code Section 507(d)(2) (which defines "substantial contributor") can force a private foundation to reduce its holdings in a corporation as independent parties gain control of the corporation. If the corporation became a substantial contributor in the foundation's early years, it will never lose that status, regardless of the support the foundation later receives from other sources. Years after the corporation has made its last contribution to the foundation, an investor unrelated to the foundation and completely uninterested in its affairs may purchase a significant or controlling stock interest in the corporation. Once the investor has more than 20 percent of the voting stock the investor is a disqualified person. At the same time, that independent investor may preclude any possibility of improper dealings between the foundation and the corporation. But since the new investor is a disqualified person, the foundation's initial permitted holdings will be 20 percent rather than 35 percent, and must be reduced by the amount of the investor's holdings, despite the effective control of the corporation by the unrelated party. Consequently, the private foundation must sell a greater portion of its holdings, and this can cause considerable difficulty when the excess holdings are in a closely-held corporation.

This is precisely what has happened to the Foundation. Midland-Ross first purchased its 21 percent interest fifteen years after Gilmore Steel's last contribution to the Foundation. At persent, all disqualified persons other than Midland-Ross together own less than 20 percent of Gilmore Steel's voting power, and the Foundation has progressively reduced its holdings in Gilmore Steel to 31 percent at the present time.

Under the excess business holdings rules as they presently apply to the Foundation, by May 26, 1984, (a) the Foundation must reduce its holdings in Gilmore Steel to 25 percent, and (b) the Foundation and all disqualified persons combined cannot own more than 50 percent of Gilmore common. (The Foundation is subject to the present holdings rules of Code Section 4943(c)(4) rather than the general rules of Code Section 4943(c)(2).) The Foundation does not expect to have any difficulty in reducing its own holdings to 25 percent by May 26, 1984. However, if Midland-Ross is considered a disqualified person the Foundation cannot meet the 50 percent combined holdings test with all other disqualified persons without selling substantially all of its holdings of Gilmore common at a sacrifice. This will also preclude the Foundation from participating in the future growth of Gilmore Steel, which the Foundation believes will be to its advantage and to the advantage of the charities to which it has distributed substantial amounts of cash in the past.

In addition, under the California nonprofit corporation laws, the Foundation is, in effect, required to obtain the consent of the California Attorney General's office (which is charged with the supervision of all charities in that state) if it intends to sell substantially all of its assets. The Attorney General has indicated to the Foundation that it believes that the appraisals made for the Foundation by Dean Witter Reynolds Inc. of Gilmore common do not reflect the potential value of Gilmore common, and that the Foundation should not sell any additional shares of Gilmore common at a distress price which reflects the current depression in the steel industry generally. The Foundation understands that a representative of the California Attorney General will appear before your subcommittee as a scheduled witness and will use the Foundation as an example of the hardships imposed by the existing excess business holdings rules on several California charitable organizations.

PROPOSED AMENDMENT TO CODE SECTION 4943

For the reasons described above, the Foundation suggests that the definition of "disqualified person" be modified solely for purposes of the excess business holding rules of Code Section 4943. The proposed amendment excludes from the category of disqualified persons a person who owns more than a 20 percent interest in an entity which is a substantial contributor to a private foundation if either of two conditions is met: (1) the entity would not be a substantial contributor on the basis of the total support received by the foundation in all its taxable years in which the person owned more than a 20 percent interest in the entity, or (2) the entity has made no contributions to the private foundation since its taxable year immediately preceding the taxable year in which the person acquired more than a 20 percent interest in the entity. We believe that fulfillment of either of these conditions would demonstrate that the 20 percent owner has too few common interests and too slight a connection with the private foundation and its other disqualified persons to be treated justifiably as a disqualified person simply on the basis of its stock ownership. We further believe that the situation in which the Foundation finds itself under the present rules was not intended by the original enactment of Section 4943.

This amendment would add a new paragraph (4) to Code Section 4943(d), to read as follows:

"(4) Disqualified person. The term 'disqualified person' shall not include a person who is a disqualified person solely through application of section 4946(a)(1)(C) (the '20 percent owner') if

"(A) the substantial contributor referred to in section 4946(a)(1)(C) has not made any contributions to the private foundation since the substantial contributor's taxable year preceding its year in which the interest of the 20 percent owner in the substantial contributor first exceeded 20 percent, or

"(B) the substantial contributor referred to in section 4946(a)(1)(C) would not be a substantial contributor based on the private foundations' aggregate contributions and bequests received in its taxable years in which the 20 percent owner would, but for the application of this subparagraph, be treated as a disqualified person."

CONCLUSION

The Foundation is aware that other persons and foundations will urge a variety of changes in the private foundation rules ranging from abolition of the rules entirely to extensions of the May 26, 1984 date. The Foundation does, of course, support any suggestions which would alleviate the position in which it finds itslef, i.e., that of not being able at the present time to get a fair price for its interest in Gilmore Steel. Regardless of the outcome of these suggestions, however, we respectfully urge the Subcommittee to recommend the adoption of the proposed amendment to Code Section 4943 suggested herein to cure what we believe to be an unintended result in certain circumstance with respect to the definition of "disqualified person."

Respectfully submitted.

ROBERT C. HARRIS,
(For Heller, Ehrman, White & McAuliffe)
Attorneys for the William G. Gilmore Foundation.

GOLD, LITTLE, SIMON, WEEMS & BRUSER,
Alexandria, La., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: It is my understanding that there will be a hearing on 27 and 28 June, 1983, by the Subcommittee on Oversight pertaining to private foundations.

The existing rules aren't satisfactory for a practical operation of a private foundation with pure charitable motivations.

I represent an individual who has no childrern and owns all of the stock of two very successful life insurance companies, and all of the stock of a number of funeral homes. The valuation of those assets on a fair market basis would be substantial. It is desired that all of the assets be transferred to a trust-foundation administered by trustees who are presidents of various colleges throughout the United States. The trustees would distribute the earnings produced by the stock to the United Negro College Fund, and other needy private universities. The dividends declared by the various companies do not equal or exceed 5 percent of the fair market value of the assets. However, all of the income would be distributed. If the dividends do not exceed 5 percent of the fair market value an excise tax is applied. This is crazy. It thwarts the obvious charitable intention of the grantor-creator, and redounds to the detriment of the public in general.

I would suggest that the law be adjusted so that a safe harbor could be obtained by a foundation which distributed all of its income within the annual period, irrespective of the ratio of the income produced to the assets of the foundation. I can't see where any difficulty or manipulation could occur in that regard.

I would be glad to elaborate on this if you so desire, but I think the meaning is fairly clear.

I am hopeful you will be able to present these views to the committee, and that an appropriate adjustment in the law will be forthcoming.

Very truly yours,

GOLD, LITTLE, SIMON, WEEMS & BRUSER.
By F. A. LITTLE, Jr.

GROOM AND NORDBERG,
Washington, D.C., June 29, 1983.

Re June 27 and 28 hearings on private foundations.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, Longworth Building, Washington, D.C.

DEAR MR. CHAIRMAN: This statement is respectfully submitted, on behalf of Goldman, Sachs & Company ("Goldman Sachs"), for consideration by the Subcommittee on Oversight in connection with the hearings on private foundations held on June 27 and 28, and for inclusion in the printed record of those hearings. Goldman Sachs is a New York limited partnership that is one of the largest international banking and brokerage firms in the United States. We wish to address Item I-(H) of the announced framework for discussion: the types of investments by private foundations.

The current tax laws unnecessarily restrict the manner in which the funds of private foundations may be invested. Private foundations are not able to pool their assets in a group trust managed by a professional asset manager, such as Goldman Sachs, without losing the general exemption of those assets from tax under section 501(a) of the Code. Because private foundations sensibly avoid the loss of this exemption, the effect of this difference in treatment is not to increase tax revenues. Instead, the effect is to preclude professional asset managers from creating group trusts that private foundations may participate in, and to force private foundations that wish to enjoy the benefits of pooled funds to seek alternative forms of investment. We believe these results are contrary to sound tax policy and good investment strategy.

Pooled funds managed by professional asset managers have the capacity to provide a variety of benefits for tax-exempt institutions such as private foundations. The most obvious benefit is to provide sophisticated asset management at a reasonable cost. A private foundation placing funds with an investment manager may obtain greater diversification of investment, the advantages of independent, professional management, and, in some cases, economy of scale. In addition, by combining funds with other tax-exempt entities private foundations through asset managers would be able to participate in investments that may not otherwise be available to the individual private foundation. As a result, higher yields may be realized than if the investing were directly undertaken by the private foundation. Another major advantage that may be realized is the stability and security that only large financial institutions can provide, and the knowledge that the highest standards of integrity will be maintained.

An additional advantage of group trusts is that they are ideally suited to investment in real estate. The high cost of real estate, particularly if the investment is to be diversified, places it beyond the means of all but the largest foundations if ownership is held by a single institution. Private foundations commonly seek stable, long-term sources of revenue; prudent real estate investment is therefore frequently desired.

At present private foundations may, of course, retain professional assistance in managing their personal funds. Under current law, however, unless the restrictions of a limited partnership are entered into, only banks are able to manage the pooled funds of private foundations on a tax-exempt basis. This disparity in tax treatment places professional asset managers such as Goldman Sachs at a competitive disadvantage, and restricts the choices available to private foundations for no apparent purpose.

The advantages of group trusts managed by non-bank professional asset managers have been repeatedly recognized in other areas of the tax laws. For example, pension plans have a particularly visible need for the sophistication, security, and economy of scale available in group trusts. The tax exemption afforded to pension funds under section 501(a) is "passed through" in this situation; preservation of the underlying tax-exempt status of the funds allows plans to more fully use the services of professional asset managers without penalty. See Rev. Rul. 81-100, 1981-1 C.B. 326. As recently as the 1982 tax act, Congress reaffirmed the benefits of group trusts managed by non-bank professionals by providing that governmental pension plans may participate without threatening the trust's tax-exempt status, even if the governmental plan has not been determined to be tax-qualified. I.R.C. § 401(a)(24).

We note that Congress and the Service have been concerned for many years about the possibility of self-dealing by the persons controlling private foudnations. Greater delegation of investment responsibility to professionals should also help to reduce any possibility for abuse in this area.

In summary, for all of the above reasons, we recommend that any legislation developed by the Subcommittee include a provision to allow professional asset managers to invest the pooled funds of private foundations on a tax-exempt basis through a group trust which commingles funds of pension plans and other tax-exempt entities. The provision should preserve the tax-exempt status of the funds if monies are commingled and held directly in a group trust by the professional asset manager. We would emphasize that this would not result in a loss of tax revenues. We would also emphasize that such a provision is necessary to allow non-bank professional asset managers to fairly compete for the funds of private foundations, and to provide private foundations with greater investment choice such as greater participation in real estate. Indeed, we see no reason why a provision of this type should not be extended to apply to all organizations described in section 501(c)(3) of the Code, including in particular, endowment funds, although we recognize that general consideration of churches, schools, and public charities may be beyond the scope of the present hearings.

Finally, we note that the two percent excise tax on the net investment income of private foundations under section 4940 of the Code should not limit arrangements of the types we have suggested. Even if funds of different foundations are held by a professional asset manager and pooled for investment purposes, the net investment income could be separately computed for each foundation and appropriate arrangements could be made for payment of the tax. Alternatively, consideration could be given to revising the excise tax to more easily accommodate such situations.

We appreciate this opportunity to bring this problem to the attention of the Subcommittee on Oversight. If you would like further information, or if we can be of assistance in any way, please do not hesitate to contact us.

Very truly yours,

THEODORE R. GROOM.

STATEMENT OF SIMEON H. F. GOLDSTEIN, NEW YORK, N.Y.

I am executive director of Harry and Jane Fischel Foundation, but the views expressed herein do not necessarily represent those of the Foundation's directors.

This Statement Deals With Investment Policies of Foundations.

For generations, investment of charitable funds was generally limited to top quality fixed-income securities. There were several reasons for this (although later, inflation made one modification of it necessary). An individual who loses his capital may be able to make a comeback, but an institution cannot. Then, an individual has an almost unlimited right to assume risks with his own funds, but one acting in a fiduciary capacity does not. Finally, in recent decades, when tax considerations have been playing an important part in business decisions, it has been felt that tax exemption would give charitable organizations an unfair advantage if they compete in business with others.

Eventually, there was a gradual change in the U.S., and equities were permitted. This apparently was done for two reasons. One is the historically low interest rates which then prevailed, and while dividend yields were not great, they were then higher than interest rates. The other reason was for protection against inflation.

However, two limitations survived. They are contained—one, expressly and the other by implication—in the Internal Revenue Code. They are that risk should be minimized, and that investments should be passive rather than active.

These limitations are almost always observed—in form. But, they are widely violated in substance.

Many foundations trade very activley in securities, and do so on a short-term basis. The following analysis indicates that active trading, as distinguished from long-term investing, is necessarily a high-risk activity.

Dividends come from corporations paying them, and the wealth gained by holding on to a stock as it rises in price comes from an increase in the economic value of the equity of a given corporation. If the national economy is strong, most well managed companies are likely to grow, and thus pay higher and higher dividends.

But what about those who buy a stock which they regard as low, sell it when they think it is high, and then buy and sell, again and again? That, of course, is the objective of foundations (and of anyone else) who trades actively in securities. If a trader beats the market—in more dignified terminology "maximizes total return"—and therefore ends up with greater gains than do investors who hold on to their shares, what is the source of that profit? It cannot be an increase in the value of the corporations' assets, because that increase is exactly the same for the investor and for the trader, and because there is no mechanism by which a company's profits are transferred to traders in its securities. That profit can only come from those who sold to successful traders before a stock went up and/or those who bought from them when the traders correctly judged that the price would decline. Some must lose, compared to what they would have made if they were satisfied to hold on to their investments, in order for there to be profits for the traders (as well as to cover brokerage and other transaction costs).

Given the tremendous competition which exists for making stock market profits (from every part of the U.S. and from major centers abroad), there is inherently, the very substantial risk for each trader that, no matter how bright he or she is, some other trader may judge better as to when to buy and/or to sell. Given the "zero sum" nature of this game, that means a substantial risk of loss (at least compared to long-term investing).

Consequently, pursuit of short-term gains turns even the most conservative securities into instruments of speculation.

If it is a sound use of foundations' principal to trade in stocks, why not also trade in commodities? Commodities do not produce any current yield. But, when one buys stock in order to sell at a profit, one is not concerned with current yield, either.

How different is stock trading from conducting a conventional business, e.g. a bakery? It is argued that a bakery enjoying tax exemption would have an unfair advantage, in that it could sell its products at a lower price than its competitors, and pay more for supplies than competitors do. But, if income taxes really are an element of cost included in determining prices which one charges or pays, would not a stock trader acting on behalf of a tax exempt organization be able to offer to sell shares at a lower price than competitors can, and be able to offer to buy shares at a higher price than competitors can? But, if the justification for restricting foundations from operating manufacturing and mercantile businesses is avoidance of undue risk, how can one defend permitting foundations to engage in a financial service business where the most important element in determining success or failure is superior prediction of stock price fluctuations? However, if the justification for the law restricting foundations' engagement in other businesses is that tax exemption gives them a competitive advantage, then why should securities trading be exempt?

There is at least one situation in which foundations (as well as pension funds and other tax exempt organizations) unquestionably do have a competitive advantage under the tax law. The holding period for long-term treatment of capital gains frequently influences the decisions of portfolio managers with respect to the selection of portfolio securities and the timing of their sale. Foundations (and pension funds) can engage in trading without this limitation.

Baking bread is an essential economic function. But, neither law nor public opinion regards it as an appropriate employment of the capital of charitable organizations (except as part of a philanthropic project). Similarly, stock trading is an important financial service because it creates a liquid capital market. But, why is stock trading more appropriate than baking bread, for the employment of the capital of charitable organizations?

I suggest that an Unrelated Business Income Tax be placed on the short term gains of any foundation (or other charitable organization or pension fund) whose rate of portfolio turnover exceeds a specified level during one calendar year (or its fiscal year), unless it has received a waiver from the I.R.S. (Provision for waivers would take care of occasional situations where there is a good reason, not related to trading objectives, for liquidating a large part of holdings.)

It may be argued that government should not substitute its judgment for that of foundation directors (or of those to whom they delegate trading decisions). But, I am not aware that anyone objects to the principle of an Unrelated Business Income Tax on decisions of foundation directors to engage in any other business (if it is clear that it is not a part of the foundation's philanthropic work). Why should they be permitted to engage in the business of stock trading?

Moreover, the tax law provisions regarding mutual funds' short term trading involve a penalty which is much more severe, and also less finely tuned, than what I propose in the preceding paragraph.

This Statement Proposes a simplification of Existing Law.

An ocean is composed of little drops. The cost of advertising, for one year, the fact that the annual report of one foundation is available, is a little drop. When this useless expense must be borne by virtually every private foundation, and must be repeated annually, you are dealing with a meaningful sum—diverted from philanthropic uses, for what purpose?

I am not suggesting any change in the rule that the report be available. But I propose abolition of the advertising.

The Foundation for which I work has spent over $200 since enactment of the Tax Reform Act of 1969, complying with this requirement. No one—but no one—has ever come to look at our report.

Normally, the only people to whom this information would be useful are those who seek contributions. They are entitled to it. But, the efficient procedure for them is to examine the reports of several foundations, at a depository, rather than to waste time visiting the offices of each foundation. Apparently, they have wisdom to do the former.

Incidentally, the I.R.S. auditors diligently check for compliance with the advertising requirement—as they should as long as it is in the law. Therefore, this provision is also a waste of government time.

CLEVELAND GOVERNMENT AND COMMUNITY AFFAIRS DIVISION,
GREATER CLEVELAND GROWTH ASSOCIATION,
Cleveland, Ohio, June 16, 1983

Mr. JOHN J. SALMON,
Chief Counsel,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I recently learned that the Oversight Committee of the Ways and Means Committee of the U.S. House of Representatives has scheduled two days of hearings on private foundations for June 27-28, 1983.

This letter is to offer information that I believe will be useful for your deliberations. Accordingly, I respectfully request that this letter be made an official part of the hearing record on private foundations.

During my 40-plus years of professional life as scientist, engineer, and executive in the Greater Cleveland area, I have been engaged from time to time in various voluntary civic services. Thus, I have seen example after example of valuable service to this community by funding from private foundations for health and human services, education, the sciences, the arts, and governmental and cultural activities. The large private foundations, for example, the Cleveland Foundation and the George Gund Foundation locally, have been particularly effective, in part because they command sufficient resources to acquire an overview of the total problems of the community. Also, they are adroit at leveraging other funds, both public and private, and at organizing collaboration among institutions where that's useful. In general, private voluntary organizations, including funding foundations, help to focus key civic leadership on problems of broad community, or public importance. Often the private organization is a partner in the operation of publicly mandated and financed programs.

It would be dismal indeed to think of this community without the unique opportunities afforded by its private foundations. I suppose that is the case in other large cities.

In the rest of this communication, I offer an example of a current program that originated from private, non-governmental initiatives, including foundation funding, and is producing important public benefits both locally and nationally—Greater Cleveland's Community Capital Investment Strategy.

Concerned about the future of their city, civic leaders, under the auspices of the Greater Cleveland Growth Association, joined with public officials to address the problem of a neglected and decaying public capital plant. A $5000 grant from the Cleveland Foundation in 1980 enabled the design of a concept plan for developing a strategy for financing the rehabilitation or replacement of the roads, bridges, transit, water, and sewer systems in the Greater Cleveland area in the 1980's. By

August, 1981, participants had created a program from the concept plan and initiated activities.

Funding of the 18-month program was from private and public sources: $100,000 from the Cleveland Foundation, $75,000 from the George Gund Foundation, and $100,000 shared equally among City of Cleveland, Cuyahoga County Commissioners, County Engineer, Regional Transit Authority, and Northeast Ohio Regional Sewer District. The Northeast Ohio Areawide Coordination Agency was a full partner. The Growth Association provided management and overhead. Governance of the program was by a Policy Committee comprising key public officials and private citizens. Detailed work of the program was carried out by a contractor and staffs of the public entities.

In a series of steps, the program identified a huge backlog of under-funded needs, reassessed this inventory to a renewal program of most critical needs, and finally, developed a strategy to finance a funding gap estimated in December, 1982, at $656 to $866 million. Since then both the private foundations and the five governments involved have pledged further support for implementation of the capital investment strategy that was adopted, $218,000 in two year grants from foundations and $100,000 annually from local governments.

Although barely underway with these plans, Greater Cleveland nevertheless is finding itself featured as a model community on the national issue of infrastructure renewal. Testimony has been presented to the Committee on Environment and Public Works of the U.S. Senate on three bills. Testimony has been presented to the Subcommittee on Economic Development of the Public Works and Transportation Committee of the U.S. House of Representatives on four bills. And testimony and briefings have been given to various committees and groups of legislators from the Ohio General Assembly. Also, presentations have been sought by national meetings and television.

In brief, Greater Cleveland is well positioned to begin to finance repairs to its house, and Greater Cleveland's experience is useful to other communities concerned with infrastructure renewal. The work leading to these local and national benefits was spawned and partly supported by private foundations; it is doubtful if it would have occurred without them.

Thank you for the opportunity to contribute this testimony.

Sincerely,

WALTER T. OLSON,
Director, Community Capital Investment Strategy.

STATEMENT OF JEANNIE I. ROSOFF, PRESIDENT, THE ALAN GUTTMACHER INSTITUTE, WASHINGTON, D.C.

Mr. Chairman: On behalf of The Alan Guttmacher Institute (AGI), I wish to take this opportunity to provide information to your Subcommittee on the important role private foundation support has played in the work of our organization. I hope this information will be useful to the Subcommittee in assessing the role of foundations today and the effectiveness of current federal laws and regulations governing them. As we support, in general, efforts to ensure that fundations continue to be a vital force in meeting the various and demanding needs of society, we would encourage the Subcommittee's favorable consideration of H.R. 3043. In our view, this legislation would allow foundations to better respond to the increasing needs of diverse organizations and programs, especially for emergency foundation support due to substantial decreases in government funding for human services and changes in general economic conditions.

AGI is a private, nonprofit corporation for research, policy analysis and public education, with offices in New York City and Washington, D.C. The Institute, which holds that all people have the right to make and effect voluntary and informed decisions about their own reproductive lives, conducts nonpartisan research and evaluation, provides assistance to government and private agencies, monitors and analyzes public policies and publishes professional periodicals in the fields of fertility regulation, population and broadly-related areas of health and social policy. These activities are designed to assist in the development of sound public policies, to promote public understanding of issues of national and international importance and to assist in the creation and maintenance of adequate public and private sector programs.

In 1981, 34 percent of AGI's budget came from unrestricted foundation grants (mostly from large foundations). The balance came primarily from restricted project support from foundations and, to a smaller extent, from federal grants and contracts and from private contributions, publication sales and other AGI-generated revenue.

Three recent examples may best serve to show the crucial importance foundation funding has been to AGI's work:

In spite of the widespread availability of contraceptive services, about 2.8 million women have mistimed or unwanted pregnancies each year. In part, this may be attributable to the high level of fear and confusion confronting individuals in their choice of a contraceptive method. Currently, there is no clear, up-to-date and comprehensive analysis of the comparative risk and effectiveness levels of the myriad contraceptive methods now available. To help clarify the issue of contraceptive safety and effectiveness, AGI undertook a major project with the assistance of Dr. Howard W. Ory (Deputy Director of the Division of Reproductive Health, Center for Health Promotion and Education, Federal Centers for Disease Control) to produce a chartbook, "Making Choices: Evaluating the Health Risks and Benefits of Birth Control Methods." This book is scheduled for a distribution of 60,000 copies in September 1983, to women, physicians, family planning clinic workers and the media, and AGI will later produce a simplified patient pamphlet (200,000 copies) based on the same data. It is our hope that these two publications together will serve as an important new resource, both for health care providers and for consumers, in the contraceptive decision-making process. This project can be seen as an excellent example of how private foundation funding can contribute to the dissemination of, and public access to, important government-gathered data. Total foundation support for this project (primarily from the Commonwealth Fund, with additional support from the Rockefeller Foundation and the Needmor Fund) amounted to $186,350.

In 1976, AGI published "11 Million Teenagers," a statistical compilation in chart form of what was then known about teenage sexual activity and pregnancy. This publication, more than 200,000 copies of which were distributed nationwide, focused the attention of the nation and its policymakers on the teen pregnancy problem. Utilizing the considerable research undertaken in the ensuing years on adolescent sexuality and pregnancy, AGI published a more comprehensive and detailed analysis, "Teenage Pregnancy: The Problem That Hasn't Gone Away," in 1980. Over 80,000 copies have been distributed to date, and the publication has received considerable press coverage, including a feature story in People magazine, appearances on the Donahue and the Today shows and numerous print news stories and features. Still widely quoted in the press, in Congressional testimony and on radio and television, "Teenage Pregnancy" remains the most comprehensive and commonly-cited base of information for discussion of issues related to teenage sexuality and pregnancy today. The research, preparation and distribution of "Teenage Pregnancy" was made possible by a $102,500 grant from The General Services Foundation.

AGI's efforts in the international family planning sphere center on its quarterly journal, "International Family Planning Perspectives (IFPP)," which reports many of the major findings of social and biomedical research that are salient both for program professionals and for policymakers around the world. This publication, which has a readership of about 25,000, was supported by the Agency for International Development (AID) from 1978 through 1982. (AID funding in 1982 totalled $333,000.) In December 1982, AID funding for IFPP was terminated. AID's Communications Review Board, citing two articles from the previous year which had mentioned abortion, erroneously asserted that the journal was engaged in abortion "advocacy." In a unique action, the Andrew W. Mellon Foundation and the William and Flora Hewlett Foundation voluntarily stepped forward and offered to provide emergency funding for two years of $480,000 and $200,000 respectively, to allow IFPP to continue to be published until more permanent financing can be arranged.

In addition to foundation support for specific projects, of particular importance to AGI has been the "core," or unrestricted, funding it has received from various foundations. Such funding is critical because of the unique combination of activities AGI performs. Much of AGI's work in the areas of public policy and publications is extremely difficult to fund under specific project grants—in the first case because the work cannot easily be structured as discrete projects and in the second because many foundations are unwilling to support ongoing publishing activities, such as periodicals. Further, the controversial and fast-breaking issues with which AGI deals often require quick, short-term responses as well as some measure of flexibility in restructuring and expanding existing projects. Urgently needed research, advocacy and publishing initiatives cannot always be delayed until project funding can be found. Moreover, unrestricted funding also allows for continuity in the overall operation of AGI. As mentioned previously, in 1981, roughly a third of the Institute's funding came from unrestricted foundation grants.

With government, at all levels, substantially reducing its support for health and social programs, many organizations must turn to private foundations and individuals for support. Thus, the competition for foundation funding will escalate, at a time when the foundations themselves are confronted with financial problems growing out of current economic problems. Legislation such as H.R. 3043, which would eliminate the existing tax disincentives for gifts to foundations by making such gifts deductible on the same basis as gifts to other charities, would assist foundations in responding to society's increasing human needs. We, therefore, urge your Subcommittee to favorably consider this legislation.

Harris Methodist Health System,
Fort Worth, Tex., June 14, 1983.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: This letter is in regard to the importance and validity of private foundations, and our Board of Trustees and Administrative Staff will be deeply grateful if it be made an official part of the hearing record to be reviewed by the Oversight Subcommittee of the House Ways and Means Committee on June 27-28, 1983.

Harris Hospital-Methodist is the largest health care institution in Tarrant County, with 628 beds, 2,200 employees and more than 600 physicians. In addition, our hospital, since 1972, has grown into one of the largest and most effective health care systems in the Southwest. Our not-for-profit hospital system is known as Harris Methodist Health System, and has eleven acute care facilities, two long-term facilities, 1,407 acute care beds, 134 long-term care beds, 1,074 physicians, 4,221 employees, and 648 volunteers. Through affiliation with the Harris System, hospitals share the latest in medical technology, financial management and administrative expertise. Each hospital offers its community the finest in patient care, cost containment, and planned growth.

With more than 6,000 hospitals in the United States and 75% of them with less than 100 beds, it is imperative that they become a part of a success-oriented system to survive and to remain effective in their local communities. To this health care ministry in our state, Harris is fully dedicated.

We want to place great emphasis on the fact that without the support of our local private foundations, the medical progress we have achieved would be impossible. Both the large and small foundations in our community have given continued support to our building and technological needs. With the increased financial pressure in our operational budgets it would not be possible to purchase the highly technical and essential equipment for this leading tertiary care hospital without these grants.

The Sid W. Richardson Foundation, the Amon G. Carter Foundation, the Mabee Foundation (Oklahoma), the Brown-Lupton Foundation, the Fleming Foundation, the Ella C. McFadden Charitable Trust and numerous small foundations have invested heavily in the building of this medical center.

To cite but one instance, the Sid W. Richardson Foundation has given continued support and provided equipment and buildings that we could not have afforded. They built the first intensive care unit in our hospital, which was also the first in our city. They purchased the first C.A.T. Scanner for our Radiology Department. They built and equipped a beautiful Child-Care Center for the employees of our hospital and our neighboring Children's Hospital. Their most recent grant of four-million dollars has made it possible to build a Surgical Tower to meet the increased demands on our medical center.

Without the continued support of private foundations, we could not maintain our medical center and reach out and make possible the continued existence of these smaller hospitals that are so desperately needed in the rural communities.

Hospital support is but one segment of the total outreach of these private foundations, and without them many of the vital institutions of this nation could not survive. Our government should give them every consideration, for they are one of the most essential and indispensable forces in our national life.

With deepest appreciation for your consideration and support of these views, we wish for you a most productive meeting.

Respectfully submitted,

Harris Methodist Health System.
Ronald L. Smith, *F.A.C.H.A President.*

Beth Israel Hospital,
Boston, Mass., June 17, 1983.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
Longworth House of Office Building, Washington, D.C.

Dear Mr. Salmon: I write in support of H.R. 3043 and to comment for the record on issues you will address in hearings scheduled by the Subcommittee on Oversight of the Committee on Ways and Means on June 27 and 28, 1983.

Let me comment from personal experience on what foundations on mean to innovations in health care.

I came to Harvard Medical School in 1971 to see whether hospitals could give first-class, one-class care to patients who seek primary care from them. At that time, we started one of the first hospital-based primary care group practices addressing service needs and also teaching and scholarly issues. I can say honestly that our program is now nationally known, and there are few hospitals in this country today who have not made a concert effort in recent years to change the way their clinics work and to offer a much higher quality of care to their patients. I believe it is fair to say that many would point to our early experience in this area as one that triggered other such ventures. We were able to do it because our hospital wanted to change the way it cared for its outpatients and because there were individuals who thought that this was important and were willing to take a chance. But the biggest stimulus came from the Carnegie Corporation of New York, the Commonwealth Fund, and shortly thereafter the Robert Wood Johnson Foundation; they felt it important to underwrite and fuel such an experiment. It is unlikely that we could have received similar support from the federal government; the foundations supplied the venture capital for something that might well not have worked.

A very similar experience can be related about preparing young physicians to become primary care providers. Several medical schools (again in the early 1970's) felt that all too much attention was being placed on the hospitalized patient as young doctors prepared for their futures. When I was growing up in medicine, I had no sense at all of what office practice would be like. All my role models were busy subspecialists, and the one thing medical school seemed to be trying to tell me was that it was a second-class decision to enter general medical practice. In the early 1970's, the Robert Wood Johnson Foundation sponsored some innovative programs in which residencies in internal medicine and pediatrics integrated training in office practice with the traditional inpatience education. These small and then quickly expanding programs were very successful. In the mid-1970's, the federal government passed legislation to further support and encourage the growth of such training. Today, at Harvard Medical School, 40 percent of residents training in internal medicine are in special programs designed to prepare them for careers in general internal medicine. If I had forecast ten years ago that this would be the case, I would probably have been carried off to the nearest mental institution. Again, I believe it is fair to say that this marked change in medical education was fueled by foundations and that an appropriate evolution occurred when the federal government later took over much of the responsibility. The foundations had the freedom to move quickly, the ability to take a chance, to invest in unfashionable but interesting ideas, and then work in partnership with the government when such ideas started to bear fruit.

I can give countless other examples. Again speaking personally, the Kaiser Family Foundation started a program at Harvard to prepare general internists for academic careers. This summer, we will have nineteen Fellows who are conducting important studies about common complaints that afflict many Americans. But even more importantly, they will then move on to be role models—teaching medical students why they do not need to order such and such a test, and showing that the life of the generalist can be just as exciting as that of the subspecialist who is already in oversupply in our country. The Carnegie Corporation and the Robert Wood Johnson Foundation sponsored Clinical Scholar Programs which have similarly impacted on a broad variety of physicians. Again, the federal government followed suit by sponsoring faculty-development programs for family physicians. I expect that shortly federal support for faculty development for general internists and pediatricians will follow. You need only look at the annual reports of such foundations as the Commonwealth Fund, the Robert Wood Johnson Foundation, the Henry J. Kaiser Family Foundation, the John Hartford Foundation, the Kellogg Foundation to see what a role they have had in innovation in health care and how small ideas have grown rapidly into programs that have had an enormous impact.

Legislation that will encourage private individuals to contribute to larger philanthropic organizations makes a lot of sense. Foundations have administrative staff who can channel and direct funds with more creativity than can the individual contributor. The Permanent Charity Fund of Boston is an excellent example of how a community-based foundation can coordinate and integrate private philanthropy. The efficiency gained by centralized administrative efforts is clearly advantageous. Anything that improves flexibility for foundations moreover, while maintaining their public accountability, has to be worthwhile.

I strongly favor H.R. 3043 and would appreciate your entering my comments into the Hearing record.

Sincerely,

THOMAS L. DELBANCO, M.D., *Director, Division of General Medicine and Primary Care, and Association Professor of Medicine, Harvard Medical School.*

INSTITUTE FOR SOCIAL RESEARCH,
THE UNIVERSITY OF MICHIGAN,
Ann Arbor, Mich., June 14, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: My letter is to bring to the attenton of the Subcommittee on Oversight of the Ways and Means Committee the important role played by foundations in this country in the support of critically important research activities and research institutions. I can best make the point by describing the role played by the Sloan, Rockefeller and Ford Foundations in helping to support a critical national research resource during a period when public support for basic social science research was sharply and abruptly reduced, with consequent jeopardy to both research programs and research institutions.

The Institute for Social Research (ISR) at The University of Michigan, which was the beneficiary of the program support that I will describe below, is the largest university-based social science research institution in the western world. One of our main contributions to knowledge about society, and one of our principal sources of strength as an institution, is the ability to conduct large-scale mesurement-oriented studies of a longitudinal nature. One such study, probably the most unique data base that we possess in the social sciences, is the Panel Study of Income Dynamics (PSID).

This study was begun in the late 1960s with public support (originally from the Office of Economic Opportunity, then from the Department of Health, Education and Welfare, then jointly from the Department of Health and Human Services and the National Science Foundation, and in recent years almost entirely from the National Science Foundation), and by 1981 comprised a 13-year longitudinal data base which tracked the same families and individuals, focusing on measurements of economic status, changes in economic status, and the factors associated with both. This study is already unique in that it provides the best single source of information that we have in the U.S. on the determinants and characteristics of persistent poverty and dependency, but its full potential is yet to be realized—if it is continued for another half decade or decade, it will be the richest source of information we have about the dynamics of intergenerational transmission of economic status, values and attitudes.

As I indicated above, the study had traditionally been supported by the public sector, and in recent years largely by the National Science Foundation. In the Reagan Administration's first budget proposal to the Congress for fiscal year 1982, the social and economic science division of the NSF (which is the support base for the study) was recommended for a cut of 75 percent—from a $40 million figure contained in the fiscal year 1982 Carter budget to $10 million. Since the PSID has an annual operating cost of close to $1.5 million, it is obvious that a $10 million budget for the entire spectrum of social and economic sciences within the NSF could not possibly sustain a single study that costs $1.5 million annually.

We at ISR recognized the potential impact of the recommended cuts on this and other studies, and went to the private foundation sector for help. We told the Sloan, Rockefeller and Ford foundations that a study of this sort, with its measurement orientation, high costs, and wide-spread usage both in the scientific and policy communities, was in our view the responsibility of the public sector since it was a prototypical "common good." But we pointed out to them that public sector support for this study could not possibly be sustained during fiscal year 1982 and probably fiscal year 1983, given the budget recommendation contained in the President's budget request. We explained the crucial importance of sustaining the study, and requested two-year support to enable the study to survive while we attempted to pursuade the Congress and the Administration that the originally recommended cuts represented a serious error in the allocation of national resources.

All three foundations agreed to undertake the transition funding request, and collectively provided us with $1.2 million over a two-year period, for the explicit purpose of enabling the PSID to survive for those two years and helping ISR as an institution to adapt to the drastic change in federal research policy. While we could make a strong claim for some public support even at greatly reduced funding levels, the support needed to sustain the study for the fiscal year 1982 and fiscal year 1983 years could not possibly come entirely from public funds and would have to be significantly supplemented by private monies.

Despite the fact that programs involving the collection of basic data, designed for widespread use and analysis by both the academic and policy communities, is not a high priority for private foundations (and properly so), all three foundations saw the urgency of the situation and agreed to contribute the requested amounts. It is entirely clear to me that, in the absence of support from these foundations, the PSID would have died, and the nation as a whole would be much poorer in terms of its ability to understand the dynamics of poverty, dependency, changes in economic status, and eventually the mechanisms by which economic status is transmitted from one generation to the next.

You will be pleased to know that the story has a happy ending—at least at the moment. Although public sector support for basic social science research is still well below the levels of several years back, actions in the House and the Senate have ensured that the support levels are significantly higher than those originally recommended in the Administration's fiscal year 1982 and fiscal year 1983 budget requests. Moreover, the fiscal year 1984 budget request for the National Science Foundation explicitly contained a provision for approximately $1.0 million for the PSID, and we expect to be able to gather the remainder of the needed support from other federal agencies with a strong interest in these data. Thus the role that we ask the private foundations to play—to ensure the survival of the study, and of the research institution housing it, has worked out exactly as we had hoped. It now appear sthat the study will continue indefinitely, subject to technical peer reviews of merit.

If the private foundations had not stepped in with generosity and speed at a time of urgent need, the opportunity to continue this highly valuable national resource would have been lost permanently. In my judgment, this illustrates one of the kinds of roles that private foundations have played in the U.S., and is an important reason why we need to maintain vigorous private foundations in this country.

The important lesson that I have learned from this experience is that private foundations can and will play a crucial role in helping to ensure the survival of functions and institutions that for one reason or another are threatened with extinction. They do not and cannot play the role of providing permanent sources of support for major statistical series—that is unambiguously a public sector function, and eventually it will have to be fully undertaken by the public sector or it will not be undertaken at all. The proper role of foundations is not to underwrite permanently such activities but rather to represent a source of risk capital for new research ventures, a source of support for activities which are inappropriately supported from public funds for one reason or another, and as in our case, a source of survival for important functions that otherwise could not be continued because of a hiatus in public support.

I hope these comments will be helpful to you and to the Subcommittee. I would appreciate your making them part of the official record for the hearings of the Subcommittee on Oversight, which as I understand it are scheduled for June 27-28.

Sincerely,

F. THOMAS JUSTER, *Director.*

THE UNIVERSITY OF IOWA, GRADUATE PROGRAM IN HOSPITAL AND
HEALTH ADMINISTRATION, AND CENTER FOR HEALTH SERVICES RESEARCH,
Iowa City, Iowa, July 19, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: This letter is to underscore our support of H.R. 3043.

The Graduate Program in Hospital and Health Administration & Center for Health Services Research of The University of Iowa is the recipient of two important grants from foundation sources. A 2-year $70,000 grant from the Commonwealth Fund of New York supports a major portion of a study of maternal and child health services in Iowa. The study is a collaborative effort of key state agencies, including the University of Iowa Hospitals and Clinics and the state Departments of Health, Social Services, and Public Instruction. Its goal is the development of a plan for the efficient delivery of publicly funded maternal and child health services that could serve as a model for other states faced with the similar problem of reduced funding levels that have occurred with the implementation of the federal block grant. To date the study group has made a preliminary report to the State Legislature. Subsequent study phases will include an assessment of unmet need for sevice, cost analysis, and implementation. The financial support of the Commonwealth Fund for this project has been extremely valuable in setting the stage for continued collaboration among key Iowa agencies in this vital area.

The W. K. Kellogg Foundation has provided in excess of $200,000 during a 5-year period leading to development and implementation of a successful nontraditional educational collaboration with a number of state and private colleges and universities to allow promising undergraduates to complete their Bachelor's and Master's in Hospital and Health Administration in five years. Marketing, recruiting, and administrative efforts for this ongoing program were aided to a very substantial degree by grant resources.

In sum, we feel that the work that is generated through Foundations such as the Commonwealth Fund and W. K. Kellogg Foundation are vital to sustaining the educational and research efforts of our nation.

Sincerely,

Samuel Levey, Ph.D., *Professor and Head.*

[Western Union Mailgram]

Judson College,
Elgin, Ill., June 15, 1983.

Hon. Charles B. Rangel,
Chairman, Oversight Subcommittee,
House Committee on Ways and Means, Washington, D.C.

Urge your support of the Kellogg Foundation during the June 27-28 hearings of the Oversight Subcommittee of the U.S. House Committee on Ways and Means. The continuation of the excess business holding provisions will greatly affect what Kellogg Foundation and other like foundations will be able to do to assist private higher education institutions such as Judson College and is now unnecessary because of the provisions of tax and trust law.

Harm A. Weber, *President.*

Judson College,
Elgin, Ill., June 14, 1983.

Hon. Philip M. Crane,
Longworth Office Building,
Washington, D.C.

Dear Sir: On June 27-28 the Oversight Subcommittee of the U.S. House Committee on Ways and Means will hold hearings to review the 1969 Tax Act's effect on private foundations.

We are particularly concerned over the negative impact which the excess business holdings provision of the 1969 Tax Act has had on one of our major supporters: the W. K. Kellogg Foundation of Battle Creek, Michigan. This provision (Section 4943) on "excess" business holdings of private foundations limits the proportion of stock of any particular business enterprise which a private foundation, like Kellogg, may own.

This restriction has proven to be unnecessary, in our judgment, because of other-provisions of tax and trust law and an unwarranted intrusion on the investment rights and responsibilites of foundation managers and trustees. For example, no other charities are so restricted in their portfolio management, and we don't believe private foundations should be either. This provision has also helped to effectively "kill" the birth of new major foundations since the 1969 Tax Act.

I'm taking the liberty of enclosing a background paper, developed by the Kellogg Foundation, on this issue.

Ultimately, of course, our concern is with the future grantmaking capability of foundations like Kellogg and with the best interests of philanthropy. The Kellogg Foundation has an outstanding record in terms of both asset growth and payout for charitable purposes, yet it faces the prospect of forced divestiture under the existing excess business holdings provisions. Judson College has been most grateful for the support received from the Kellogg Foundation, and such a divestiture could drastically lower funds which the Foundation has available to support our College and other nonprofit organizations.

Your support of the Kellogg Foundation during the hearings, and relief for the Foundation from the excess business holdings provision, will be much appreciated. I would be pleased to answer any questions which you or members of your staff may have.

My thanks for your continued leadership and efforts on behalf of the 12th District.

Sincerely,

HARM A. WEBER, *President.*

A REVIEW OF EXCESS BUSINESS HOLDINGS PROVISIONS (IRS SECTION 4943) AND THEIR IMPACT ON PRIVATE FOUNDATIONS

The excess business holdings provisions (Section 4943) of the 1969 Tax Act restrict the percentage amount of a single corporate stock which may be owned by a private foundation and its "disqualified persons." [1]

These provisions should be repealed by Congress for a number of reasons:

1. Fourteen years of experience have shown that the excess business holdings provisions are now unnecessary because of the provisions of tax and trust law.
2. The provisions have contributed to the dramatic decline in the creation of new foundations since 1969.
3. The excess business holdings provisions represent an unreasonable and unwarranted restriction on the investment decisions of foundation trustees and managers.
4. The provisions threaten the future grantmaking capacity and the value of assets of a number of foundations nationwide, including the W. K. Kellogg Foundation.

I. EXCESS BUSINESS HOLDINGS PROBLEMS BEFORE TRA69

In 1965, the U.S. Department of Treasury reported that a number of foundations (109 of 1,300 private foundations surveyed) owned 20 percent or more of a business enterprise. The Treasury Report provided examples of how, in a limited number of cases, such ownership had resulted in related abuse by foundations. It expressed anxiety over the potential for further abuses of three general types. They were: competitive advantage, distribution of earnings, and management of business enterprise.

Competitive advantage

Treasury noted that a few business owners had manipulated the purpose of a foundation by using tax-free dollars to further business activities in ways considered unfair to competitors. Corporate taxes were avoided by paying pre-tax profits to a foundation (tax-exempt); using pre-tax donations to a foundation to help capitalize or expand a business; or by using tax-free foundation investment income to supply capital to a business. This represented unfair competitive advantage, since businesses not owned by foundations rely on after-tax dollars for capital.

Distribution of earnings

There were examples of foundation-owned enterprises delaying distribution of profits to the parent organizations. This allowed profits to be reinvested in business modernization without tax liability; and in turn delayed benefits to charity through foundation grantmaking.

Management of business enterprise

The Treasury Report said there were instances when a foundation became involved in business activities to the point that the charitable pursuits of the foundation were "submerged" by pressures and demands of the commercial enterprise.

II. DESCRIPTION OF TRA69: EXCESS BUSINESS HOLDINGS PROVISIONS

Under Section 4943 of the 1969 Tax Act, the federal government adopted new restrictions on foundations which prohibited "excess" business holdings; with the intent of forestalling the types of foundation/business interactions of concern to the

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[1] "Disqualified persons" are essentially the founder, foundation managers, and their lineal descendants.

Treasury Department. Excess holdings that existed before 1969 were treated differently from those acquired afterward.

Holdings acquired after 1969

For holdings acquired after 1969, the foundation—in conjunction with all "disqualified" persons (essentially the founder, foundation managers and their lineal descendants)--may not in most instances hold more than 20 percent of the voting stock in the business enterprise. Stock owned above the permitted limits must be sold within five years.

Holdings acquired before 1969

The rules for pre-1969 holdings are relatively complex, with each foundation provided two time periods, or phases, for divestiture. The rules, as they apply to the Kellogg Foundation, are:

Phase 1: In a formula based on percent of stock ownership in 1969, a foundation must have reduced its percentage of ownership to 50 percent or less (including that owned by disqualified persons). Foundations were given from 10 years to 20 years to reach the 50 percent level.

Phase 2: The length of time for Phase 2 is 15 years for all foundations regardless of their holdings. At the end of Phase 2, the foundation must have reduced its holdings to 35 percent, or less.

III. WHY THE EXCESS BUSINESS HOLDINGS PROVISIONS ARE NOT NEEDED

By enacting Section 4943 of the 1969 Tax Act, Congress limited the amount of a single corporate stock or corporate ownership which could be held by a private foundation. However, the abuse relative to foundation ownership of stock, as cited in the 1965 Treasury Report, and in the 1969 Congressional hearings, included only a few, if well publicized, examples.[1] The 1965 Treasury Department Report emphasized that "(our) investigation had indicated that most private foundations act responsibly and contribute significantly to the improvement of society." In light of the limited number of cited abuses, Section 4943 has proven to be a heavy handed response; punishment of the many for the sins of the few.

The types of abuses with which Congress was rightfully concerned were addressed forcefully in the 1969 Tax Act not only by the Section 4943 provisions relating to excess business holdings, but also by the other sections providing a penalty tax on jeopardizing investments, setting a minimum distribution requirement for foundations, and by a myriad of other foundation requirements. All of these provisions in the 1969 Tax Act, as well as the foundation oversight under general trust law, represent a strong case for now revising what John Nason,[2] author of "Trustees and the Future of Foundations," recently labeled "the unnecessary regulations on excess business holdings."

This revision can be made because: (1) the excess business holdings provisions as currently written are no longer required to stop abuse; (2) because the excess business holdings provisions appear to be one of the major disincentives to the creation of new foundations; (3) because the provisions represent an unreasonable restriction on the investment responsibilities and rights of foundation trustees and managers; and (4) because the provisions threaten the future grantmaking capability of foundations.

1. The provisions are not required to stop abuse.

The three primary areas of limited abuse reported by the Treasury Department in 1965 are today adequately safeguarded by other laws.

Competitive advantage

Examples of unfair competitive advantage have disappeared since the 1969 Act. Yet many foundations still have excess holdings. In short, provisions of the law—notably rules against self-dealing and jeopardy investments—have eliminated the abuses.

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[1] The abuse most often cited during the 1969 hearings related to the James Irvine Foundation of San Francisco, which owned 53 percent of the Irvine Company. The Company in turn owned 88,000 acres in suburban Los Angeles. The land was allegedly valued by the Company at $1 billion. However, the Foundation carried its Irvine Company stock at a value of $2.

[2] December 7, 1982 speech before members of the Minnesota Council on Foundations.

[3] Estimate based on survey conducted by the Council on Foundations in 1980 and independent review of foundation 990s. Scope of problem is difficult to ascertain since foundations facing divestiture requirements are reluctant to be identified. Knowledge of such forced sale of assets at a future date could depress the value of their holdings.

Distribution of earnings

The problem of some foundations making small payouts to charity has been eliminated by the congressionally mandated payout requirement for private foundations, five percent of market value of assets must be distributed annually.

Management of business enterprise

As noted earlier, problems of jeopardy investments and self dealing have been effectively eliminated by other provisions of the 1969 Tax Act. In addition, both trust law and oversight regulations of the Securities and Exchange Commission for publicly traded stock provide additional safeguards regarding fiduciary rights and responsibilities of foundation and corporate board members.

2. The provisions are a barrier to creation of new foundations.

Since 1969, many potential donors with family business interests have decided not to create foundations. There have been a number of reasons, including differential treatment of gifts to public charities as opposed to foundations, and changes in the general economy. The excess business holdings provisions have also been one of the major deterrents.

The impact of these provisions is understandable in light of the history of foundations in America. According to the 1970 Peterson Commission, the creation of foundations—and particularly America's larger ones—usually has been in the form of blocks of stock controlling a business which the donor developed during his lifetime. Data compiled by the Commission indicated that over half of all gifts to large foundations were in the form of control stock. And Section 4943 of the 1969 Tax Act has been directed precisely at discouraging the contributions of this type of asset. This impact seems to be borne out in the decline in creation of new foundations nationally since the excess business holdings provisions went into effect in 1969. In the decade from 1970–79, only 258 new large foundations were established (that is, with assets greater than $1 million or grants of more than $100,000 per year). Only two of those had assets greater than $100 million. This contrasts with the creation of 1,261 new large foundations from 1950–59, and 756 from 1960–69.

3. The provisions represent an unwarranted and unreasonable restriction on investment rights and responsibilities of foundation trustees and managers.

Only private foundations—among the nation's multitude of philanthropic organizations—are restricted as to the type of assets which they may have in their portfolios and use to generate maximum income for charitable activities. The argument is not that all foundations should have assets concentrated in a particular form of investment. For many, a diversified portfolio represents the best return for charitable purposes. For others, however, assets retained in the form of one corporate stock have proven to be outstanding sources of income for charity. Foundation trustees and managers should thus have the same right and responsibility—as do the trustees of all other charities in the United States—of making sound investment decisions based on the best interests of charitable purposes and not based on the dictates of government. Eliminating Section 4943 of the Internal Revenue Code (excess business holdings provisions) will provide such equality of investment options to foundations.

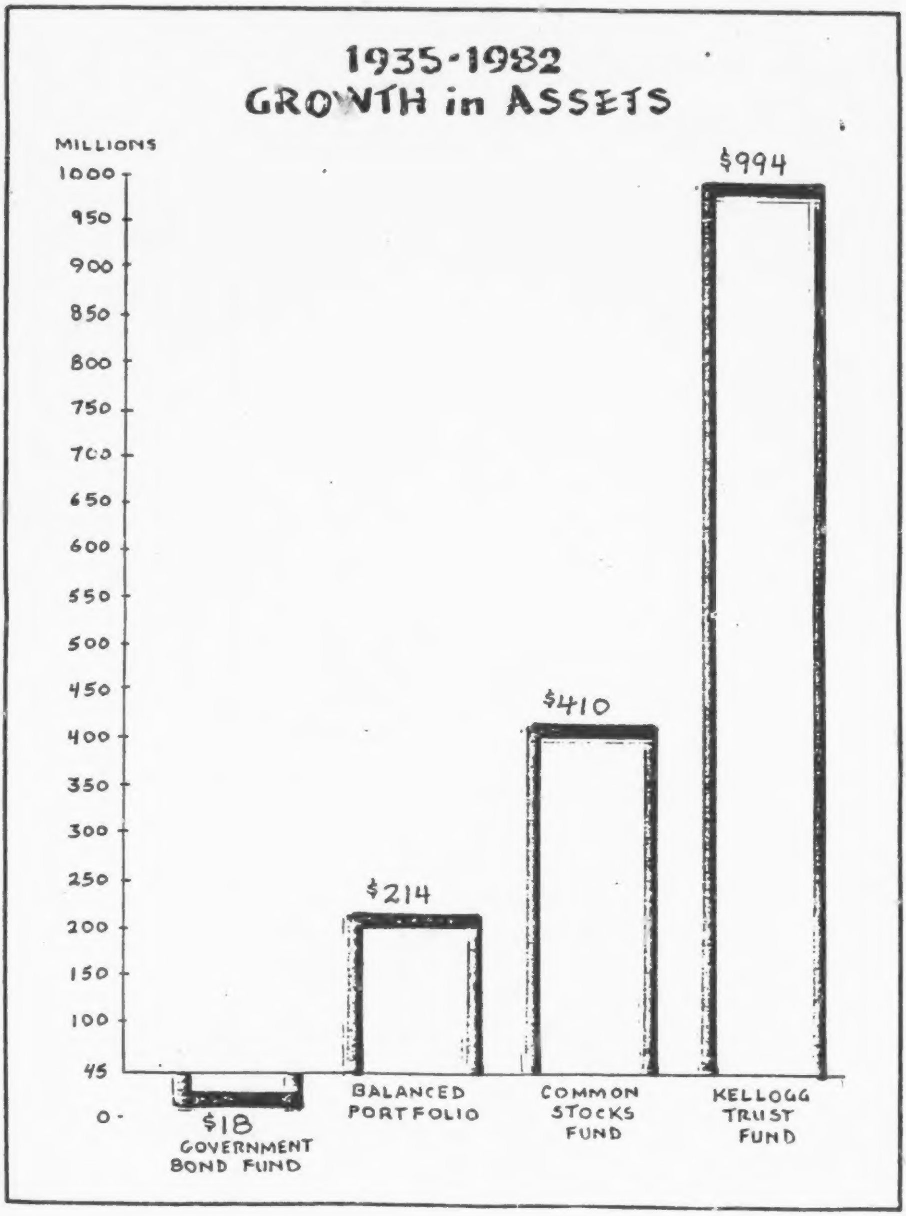
4. The excess business holdings provisions may result in significant loss of foundation assets and grantmaking capability.

The excess business holdings rules are too complex, inflexible and difficult to work with, and they have severe, totally unanticipated consequences for existing foundations and corporations. The major pre-1969 foundation with excess business holdings still have a number of years to reach permitted divestiture levels. There likely will be increased problems, particularly with business takeovers and mergers as the foundations divest. Knowledge that a foundation must divest a major block of stock within a specified period is also likely to depress the price and aid in outside merger or takeover attempts of a related business. Divestiture under these circumstances, or because of a generally depressed economy, is difficult, expensive, and may result in significant loss of foundation assets. That translates into a loss of funds for charitable purposes.

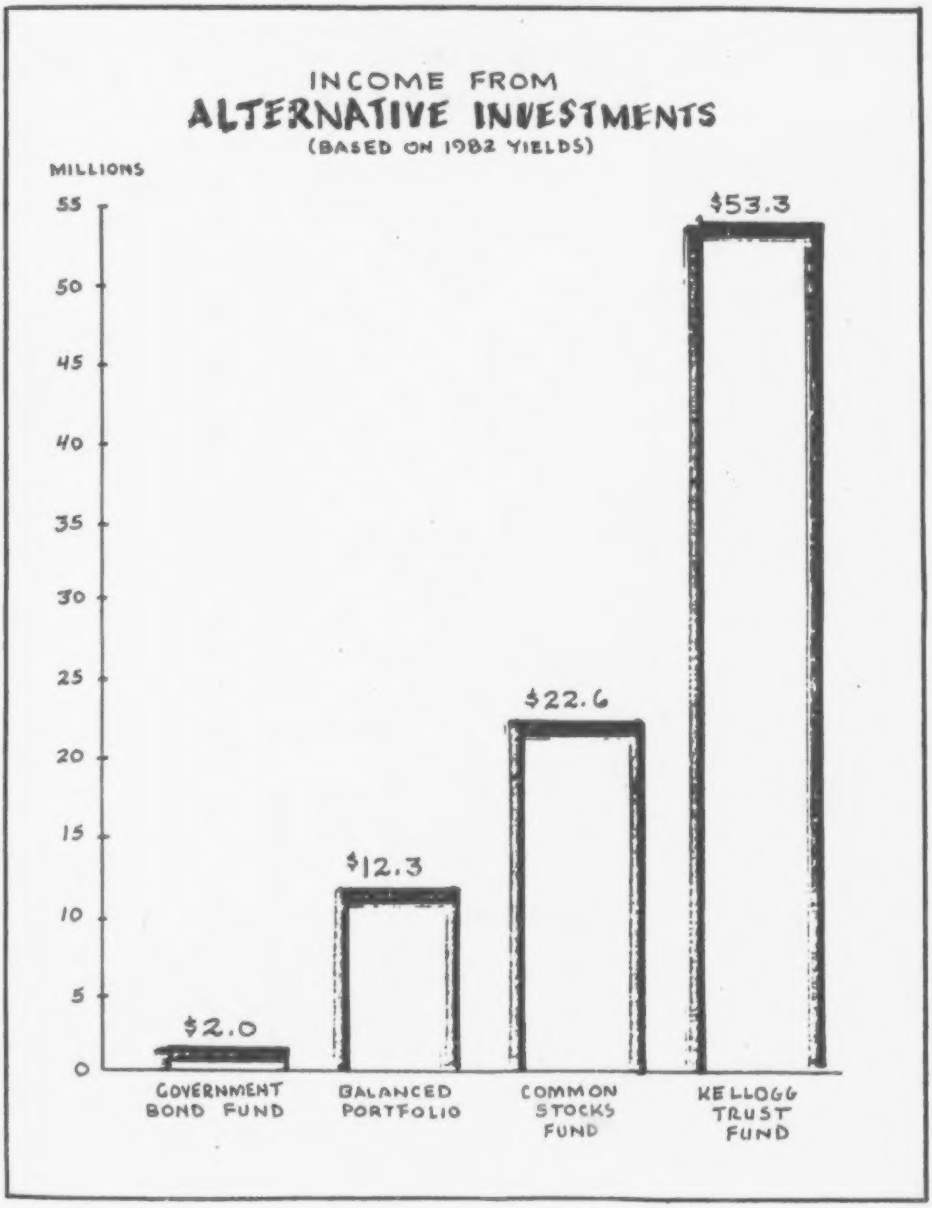
IV. THE KELLOGG FOUNDATION'S SITUATION RELATIVE TO EXCESS BUSINESS HOLDINGS

The W. K. Kellogg Foundation has "excess business holdings" as defined under the law, and outlined on page 4. The Foundation is the sole beneficiary of all income from a separate Trust (the W. K. Kellogg Foundation Trust) which currently owns approximately 47 percent of the outstanding shares of the Kellogg Company, an international pioneer and leader in the ready-to-eat breakfast cereal industry. The Kellogg Foundation is concerned since the excess business holdings provisions require the Trust to sell by 1994 a major portion of its Kellogg stock to meet the excess business holdings provisions of the existing law. The Foundation's concern is with the impact such a sale will have on the potential value of its assets, and on its continued ability to fund charitable projects and organizations.

As the two charts on following pages illustrate, the Kellogg Trust Fund (composed entirely of Kellogg Company stock) has grown dramatically in value from a base of $45 million in 1935 to a current value of $994 million. This rate of growth exceeded the same historical performance of government bonds by 2,150 percent; common stocks by 811 percent; and a balanced portfolio of stocks and bonds by 376 percent. In addition to this dramatic growth in value by Kellogg stock, the Kellogg Trust fund paid out $569 million for charitable activities of the Kellogg Foundation; far more than what would have been available from any other type of investment for this same period.



1935-1982 GROWTH in ASSETS


INCOME FROM
ALTERNATIVE INVESTMENTS
(BASED ON 1982 YIELDS)
MILLIONS
55
50
45
40
35
30
25
20
15
10
5
0
$2.0
$12.3
$22.6
$53.3
GOVERNMENT BOND FUND
BALANCED PORTFOLIO
COMMON STOCKS FUND
KELLOGG TRUST FUND

The Kellogg Trust's 1982 distribution to charity was 136 percent more than possible from a diversified portfolio; 334 percent more than from a 50 percent stock/50 percent bond (balanced) portfolio; and 2,553 percent more than would have been possible from a fund comprised of government bonds.

The record shows that—in the case of the W. K. Kellogg Foundation—the holding of concentrated stock in the Kellogg Company has continued to be in the best interests of charity and the thousands of charitable organizations which receive financial support from the Foundation.

V. SUMMARY

It has taken our nation almost a century to develop its private foundations. This pool of capital began after the turn of the century through personal initiatives by Carnegie, Ford, Rockefeller, Kellogg, Mott, Kresge and others who contributed shares in the industries they had built. They saw foundations as the way to further charitable purposes and at the same time to provide for the continuance of their businesses or their orderly transfer to new ownership.

Private foundations offered the opportunity for entrepreneurs, during their lifetimes, to participate in trying to improve their cities, the nation, and even the world. They were motivated by a desire to help, and our government gave them the incentives they needed to try. Those factors led to the development of private foundations in America—charitable institutions which now hold and manage approximately $43 billion.

Today, the incentives are disappearing. The 1969 Tax Act—and specifically its provisions relating to excess business holdings—is partially responsible.

As the Commission on Foundations and Private Philanthropy (Peterson Commission) noted in 1970: "We objected to the way the new law (1969 Tax Act) limits foundation ownership of corporate control stock. A payout requirement, prohibitions on self-dealing, and greater disclosure—all required by the new law—seem to us to provide a better solution than an arbitrary limit on percentage of ownership * * *. We believe this provision could easily retard the flow of large pools of capital into philanthropy." [4]

That prediction has become a reality since 1969. Therefore, the excess business holdings provisions of the 1969 Tax Act (Section 4943) can and should be eliminated by Congress because:

1. Public interests are safeguarded by other parts of the 1969 Tax Act;
2. The excess business holdings provisions are retarding the creation of new foundations in America;
3. Through these provisions, private foundations alone among all charities in our nation are hampered in their investment decisions; and
4. The excess business holdings provisions threaten the ability of the Kellogg Foundation and other foundations to maintain the outstanding level of charitable giving which has characterized their grantmaking over many decades.

The over-riding question may be one of the long-term public interest and policy. Public opinion polls about foundations over the past ten years establish clearly that a great majority of the public has favorable feelings about the utility of foundations. The provisions of TRA69 which discourage, impede, and limit incentives to the growth of private foundations are out of step with the public view of the value of foundations. The excess business holdings provisions should be eliminated and the incentives restored for creating new foundations.

KOHLER CO.,
Kohler, Wis., June 30, 1983.

Re hearings on private foundations.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: The framework for discussion issued by Representative Rangel on May 3, 1983 requests comments on Foundation divestiture problems with regard to excess business holdings and the circumstances under which relief from the divestiture rules would be appropriate. In the case of Kohler Co. and the Kohler Foundation, Inc. These rules cause a difficult and complex burden with regard to minor transactions involving the company's employee stock plan. Yet having the burden of these rules apply to our employee stock plan transactions appears to serve no purpose for which the excess business holding provisions were enacted. Kohler Co. and the Kohler Foundation believe it would be wise for Congress to consider the impact of the present holdings rule, the so-called downward ratchet rule of IRC Sec. 4943(c)(4)(A)(ii) in a fact situation such as ours. We believe it operates unfairly and as a practical matter serves no legislative purpose. It also tends to discourage Kohler Co. from having an employee stock purchase plan which seems favored on policy grounds by other legislation.

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[4] Peterson Commission Report, p. 167.

Kohler Co. is a manufacturer of plumbing products, small engines and generator sets, headquartered in Kohler, Wisconsin. It is a private corporation and its stock is not widely held nor actively traded, has a high value per share and is therefore not readily marketable. In order that its executive employees may participate in the ownership of the company, Kohler Co. has a restricted stock plan under which its shares may be bought and sold on a book value formula basis. Further, the company is considering a 401(k) plan which would make equity participation available to a broader base of its employees. For purposes of the restricted stock plan, fractional shares may be purchased which are not available to holders of unrestricted stock.

The Kohler Foundation, Inc. is a private charitable foundation organized in 1940. It holds a significant share of Kohler Co.'s stock which it acquired by gift from members of the Kohler family during the 1940s and 1950s. In 1982 the Foundation dispersed over $800,000 for its charitable purposes which emphasize a scholarship program for schools in Sheboygan County, Wisconsin. The Foundation has also been a leader in preserving the works of primitive artists and has made contributions to a wide variety of educational and artistic organizations by providing seed money to help these organizations get started or initiate new programs until broader public suppport can be developed. In this regard, Representative Conable's comment in the Congressional Record of May 18, 1983, that foundation giving multiplies itself by stimulating other public giving, is certainly applicable to the Kohler Foundation. As Congress intended in enacting Sec. 4943 of the IRC, the holdings of the Kohler Foundation and its disqualified persons are grandfathered at the level of their May 26, 1969 holdings, subject to the provisions of the downward ratchet rule. It is from this rule, which operates in a complex, burdensome but purposeless manner on Kohler Co. and the Kohler Foundation that relief is sought.

Except for minute changes in its holdings caused by transactions in its employee stock plan the Kohler Foundation would be unaffected by the ratchet rule as it neither repurchases its own stock nor has occasion to issue additional stock. Thus, a desirable policy of permitting employee investment in the corporation is penalized by the undesirable effect of forcing the Foundation to dispose of Kohler Co. stock it would otherwise be entitled to retain. This forces the Foundation to dispose of stock that is not readily marketable but which constitutes an excellent long-term investment and provides a stable asset base not subject to the wide value fluctuations of publicly traded stock. Further, but for some uncertain transitional rules, the effect of the ratchet rule on the Foundation is severely exaggerated because an excess holding of a small fraction of a share created by a fluctuation in employee stock can only be cured by the Foundation disposing of a whole share since only employees may purchase fractional shares. This requires the Foundation, as a practical matter, to dispose of more stock than the statute requires to cure a tiny excess holding. Yet the ratchet rule permits no carry forward of the excess disposition against the next fractional excess holding so that each cycle of fluctuation in employee stock requires the disposition of whole shares to cure fractional excess holdings. This burdens Kohler Co. with keeping track of complex calculations each time an employee buys or sells restricted stock and burdens the Foundation with excessive dispositions. These unwarranted effects on Kohler Co. and the Foundation militate against the employee stock plan being broadened to a 401(k) plan although that would seem to be a purpose that Congress favors. Yet, the negative impact on the policy favoring employee stock ownership does not seem to produce any offsetting benefit by promoting the purposes and policies for which Sec. 4943 was enacted.

According to the Senate and House Reports on the Tax Reform Act of 1969, the purposes of the excess business holding limitations were:

(a) To prevent private foundations from being used to maintain control of for-profit businesses.

(b) To prevent the attention and efforts of foundation managers from being diverted from charitable purposes to for-profit purposes.

(c) To prohibit private foundations from operating for-profit businesses in a tax exempt context which would allow them to compete unfairly with other for-profit businesses.

Certainly when excess holdings have to be computed in terms of hundredths of a share their effect on the control and operation of a corporation are too miniscule to have any impact with respect to the purposes of the 1969 Act. If there is any distraction of foundation managers from their charitable purposes, it is because of the need to constantly monitor the complex excess business holding computations every time an employee purchases or sells restricted stock. As applied to fluctuations in the Kohler Foundation's holdings caused by Kohler Co.'s employee stock plan, the provisions of Sec. 4943 are like the proverbial elephant gun being used to shoot gnats. It does far more harm than good.

Relief seems appropriate in cases like Kohler's where a foundation is negatively affected for no useful purpose by tiny fluctuations in the outstanding stock of a company in which it has holdings. Such relief appears easily provided, however, by just a slight modification of the de minimus rule of Sec. 4943(c)(A)(ii). That section provides that decreases in holdings attributable to issuances (or issuances coupled with redemptions) need be taken into account only as the close of each taxable year, unless the aggregate decrease exceeds 1 percent. Changing this so that small fluctuations need not be accounted for at all so long as they don't exceed a 1 percent decrease in any year would substantially decrease the burden Sec. 4943 imposes on foundations without any practical detriment to the statute's purposes. This slight enlargement of the de minimus rule would eliminate the excess holding provision's bias against Kohler Co. having an employee stock plan. It would eliminate the unfairness of Kohler Foundation having to dispose of whole shares to cure fractional excess holdings. It would be a step toward simplicity within some very complex regulations, presumably for the benefit of many more foundations than just ours.

I hope these comments provide some justification for a review of the present business holdings provisions and that our specific circumstances be considered as new solutions are developed by Congress. We strongly urge your approval of our specific recommendation to provide relief from the de minimus rule. Thank you for your consideration of this matter.

Respectfully submitted,

ROBERT H. MILBOURNE,
Vice President and Economist.

LAO FAMILY COMMUNITY INC.,
St. Paul, Minn., June 10, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing on behalf of Lao Family Community, Inc. to relate the essential role which The Saint Paul Foundation, in cooperation with and with financial support from other local foundations and organizations, has played in our organization's growth and survival. Lao Family Community is a self help group for Hmong and Lao refugees which now number about 14,000 in Minnesota. At the time Hmong/Lao people began to arrive in Saint Paul, The Saint Paul Foundation took the financial risk to get our organization started, advocated for us with other foundations, enabled us to leverage funding from several public and private sources, and served as a community convenor of discussions on important issues for refugees.

Several of the grants we have received from The Saint Paul Foundation illustrate these points. In 1980, The Saint Paul Foundation was instrumental in establishing our Community Center. A $16,000, two year grant was applied to renting space for our Center, and generated additional support ($26,000 from foundations, and $99,000 from the Minnesota Refugee Program Office for English as a Second Language services). An additional $11,000 for our Center has been received from The Saint Paul Foundation in 1983.

In 1981, a two year, $33,100 grant initiated a drivers' education program for Hmong refugees. The program was provided in coordination with a local, private drivers' training school and the Saint Paul Public Schools, which provided classroom and behind the wheel instruction at reduced costs for 116 students.

In 1982 and 1983, two separate grants totalling $23,000 helped Lao Family Community establish a business venture employing Hmong women in a sewing industry. Employees adapt traditional Hmong needlework to contemporary products for sale in local and national markets.Without The Saint Paul Foundation and seven other major foundation contributors, this project could not have been undertaken.

An important part of Lao Family Community's work for two years has been a community garden and farm project, which is evolving into a major training and marketing venture organized as a Hmong owned farming cooperative. The Saint Paul Foundation has granted $55,000 to this project, and has played an important coordinating role with other funding sources.

Another example of a forming project is beginning with a $15,700 grant from The Saint Paul Foundation; land and technical assistance has been provided by another foundation. It will involve about 75 families in gardening, and chicken and pork production.

The Saint Paul Foundation has a Community Sharing Fund which provides emergency assistance to individuals and agencies. In 1981, five grants totalling $21,000 were made from this fund to cover costs of continuing programs at Lao Family Community when federal funds were eliminated.

Grants are not our only source of support from The Saint Paul Foundation. The Foundation publishes a monthly Refugee Newsletter with a circulation of 700. It has sponsored a community survey and published several major reports on refugees which have been used widely by community leaders. Recently the Foundation has created a special fund to receive contributions on our behalf while we reorganize as a new tax-exempt nonprofit. It has made technical assistance funds available for one of our special projects. Finally, The Saint Paul Foundation provides ongoing assistance as we explore new ideas for projects in economic development.

Without the leading role of The Saint Paul Foundation. Lao Family Community would not be where it is today. We need foundation support, with its flexibility and creativity, inorder to develop as a strong organization serving our community.

Sincerely,

DANG HER,
Director, Lao Family Community.

THE LINDBERG FOUNDATION,
Convent Station, N.J., June 22, 1983.

Subject: Hearings on private foundations.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, Longworth Building, Washington, D.C.

DEAR REPRESENTATIVE RANGEL: We welcome your review of the "excess business holdings" rules to which private foundations have been subjected and the hope it offers that relief may be forthcoming for situations in which the divestiture requirements serve no worthwhile purpose but impose an onerous burden. In this context we wish to bring to your attention the facts concerning The Lindberg Foundation's ownership of the common stock of General Drafting Co., Inc. which present a classic example of a situation in which current law places a needless burden on a private foundation.

Otto G. Lindberg came to the United States in 1907, just prior to his 21st birthday. In 1909 he started the drafting business subsequently incorporated as General Drafting Co., Inc. (the "Company"). From a one-man business, the Company has grown to be one of the largest map makers in the United States although still a comparatively small company (95 employees and $1,941,810 of assets at December 31, 1982). As President until 1965 and chairman of the board of directors until 1968, Mr. Lindberg personally supervised every aspect of the Company's growth and initiated the Company's continuing traditions of excellent craftsmanship and fairness to employees.

Having no family to carry on the Company which he had built up over 54 years, at age 77 Mr. Lindberg decided to contribute his common stock [1] of the Company to The Lindberg Foundation (the "Foundation") to preserve the Company and devote its earnings to worthwhile charitable endeavors. As stated in Mr. Lindberg's announcement on December 2, 1963 to the Company's employees:

"For a long time I have been thinking over various ways by which to assure the perpetuation of General Drafting in years to come and to make sure that control of it will not fall into the hands of people other than you who have worked with me to make it the successful company it is today. In addition, I should like to feel that what I have decided to do will be an incentive to all of you to make this firm, which is so much part of me, even better and more successful as the years go on.

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[1] The only other shares of common stock issued by the Company were those which Mr. Lindberg had given to employees prior to 1963. These shares were subsequently redeemed at book value or purchased by the Foundation (200 shares). The Company's only other class of stock outstanding is $100,000 of 6 percent preferred stock which was contributed by Mr. Lindberg to, and is still held by, Massachusetts Institute of Technology.

Therefore, I have decided to give to the Lindberg Foundation my present control of General Drafting in perpetuity. Through this institution we shall be able to make our charitable contributions and have assurance that our present high standards will always continue to be paramount in our company, which simply means integrity in our dealings with one another, our customers and society in general."

The Foundation, a charitable membership corporation formed under the laws of New Jersey in 1961, is, under the Internal Revenue Code, a private foundation. The Foundation is governed by a board of trustees, most of whom are employees or retired employees of the Company. No trustee receives any compensation for serving as a trustee. None of the present trustees is related to the late Otto G. Lindberg, founder of and principal contributor to the Foundation.

The Foundation's only assets are a small amount of cash (less than $24,000 at December 31, 1982) and all the outstanding common stock of the Company. Except for a small amount of interest, the Foundation's sole source of income has been dividends on the Company's stock which have totaled $968,920 since 1963. The only significant expenses incurred by the Foundation have been for accounting and legal services, primarily to cope with the compliance burdens imposed upon the Foundation by the Tax Reform Act of 1969, and the fees or taxes required by law.

The Foundation is not an "operating foundation" but confines its activities to contributing to public charities with emphasis on those serving the needs of the northern New Jersey area, both local organizations and local chapters of national organizations. Within the limit of the Foundation's resources, the trustees have sought to provide continuing support to a significant number of diverse charities on a regular basis and to meet at least one appeal each year for a specific capital item. (A list of the recipients of contributions from the Foundation in 1982 showing the number of consecutive years in which each has received a contribution is enclosed together with a list of capital expenditure contributions in recent years.) Since 1963 the Foundation has distributed $913,117 in this manner.

The synergism in the relationship between the Company and the Foundation, which was foreseen in Mr. Lindberg's announcement in 1963, continues today. Mapmaking, the Company's principal business over the years, is an art requiring skilled and experienced craftsmen. Of the Company's 95 employees, 46 have at least ten years of service with the Company, 30 have at least twenty years of service and 13 have more than thirty years of service. The outstanding employee loyalty which has made the Company prosper is enhanced by the employees' knowledge that its profits inure entirely to charities largely recognizable to them as serving their communities. On the other hand, the Foundation trustees' intimate knowledge of the Company and its stability make the common stock of the Company the ideal investment for the Foundation's charitable program. Divestiture, with the attendant loss of the Company's traditional identity, would most probably work a hardship on the Company's many dedicated employees, cripple a prospering business and make continuation of the Foundation's regular support of public charities dependent upon the mercy of fluctuations in the stock and bond markets.

We have read of the abuses which moved Congress in 1969 to restrict private foundations and their investment holdings. We sympathize with the legitimate concerns repeatedly expressed: that family interests may utilize a foundation's holdings to benefit minority stockholders, that there may be a temptation for foundation managers to divert their interest to maintenance of the business to the detriment of their charitable duties, and that tax exemption may result in unfair competition. However, we respectfully submit that there are situations such as that of The Lindberg Foundation in which the potential for these abuses is not present. None of the present trustees of the Foundation has any relationship, by blood or marriage, to the late Mr. Lindberg. Except for the Foundation and the Massachusetts Institute of Technology, a public charity, there are no stockholders of the Company. As a separate taxable entity, the Company is and always has been subject to tax. While diligently considering and discussing annually whether the prior years' level of support for each recipient public charity should be continued, increased, decreased or eliminated and which new charities might be added as recipients, the charitable duties of the Foundation's trustees do not require a significant amount of time. To the contrary, divestiture and diversification would impose a far greater investment burden and the expense of a professional investment adviser.

In summary, unless relief is forthcoming from Congress, the requirement that private foundations divest their "excess business holdings" will in our situation adversely affect, for no ascertainable reason, a small business, its employees, and continuation of a valuable charitable program. We do not ask for special privilege but hope that other similarly situated foundations whose investment present no potential for abuse might also obtain relief.

We would appreciate any help your committee can provide.

Very truly yours,

RICHARD E. SCULLY, *President.*

The Lindberg Foundation Capital Expenditures History, 1974–82

	Cumulative
1974: Morristown Memorial Hospital, Digital lung analyzer	$15,000
1975: St. Clare's Hospital, pacemaker evaluation center	15,000
Total	30,000
1976: Morris Minute Men, radio monitor for heart attack victims enroute to hospital	6,920
Total	36,920
1977: Morris Township Fire Department, jaws of life and lifePaks for entering smoke-filled buildings	9,202
Total	46,122
1978: Cheshire Home in New Jersey building fund	6,500
Total	52,622
1979:	
Boy Scouts of America—Sea Explorer ship No. 228, T.D.X. E. electric discharge pump	700
Morristown Memorial Hospital P.B. arteriosonde digital for intensive care unit	3,160
Riverside Hospital cardiac monitor for recovery room	3,000
Morris Minute Men updating alarm system	3,000
Total	62,482
1980:	
Morris Area Girl Scout Council construction materials for tree house project at Camp Mogisca	1,000
Morris Township Fire Department Four Scott Pressur-paks (self contained breathing apparatus)	3,080
Morris Minute Men, five Resusci-Annies for CPR training	850
Market Street Mission, Inc., purchase of fire safety equipment	1,000
Society of Illustrators museum expansion program	1,000
Total	69,412
1981:	
Riverside Hospital, lifeline program (3 units)	1,350
Library of the Chathams	2,500
Papermill Restoration	1,000
Total	74,262
1982:	
St. Clare's Hospital building fund	7,500
American Cancer Society–N.J. Division, Inc., mortgage retirement fund	2,500
Total	84,262

List of Recipients of Contributions From the Foundation in 1982

	Consecutive years
Hospitals:	
Children's Specialized Hospital	19
Deborah Hospital Foundation	15
Memorial Sloan-Kettering Cancer Center	19
Morristown Memorial Hospital	19
Overlook Hospital Association	18
Riverside Hospital	15
St. Barnabas Medical Center	14
St. Claire's Hospital	15
Welkind Neurological Hospital	2
Institutions of Higher Learning:	
College of St. Elizabeth	19

	Consecutive years
County College of Morris	9
Drew University	19
Fairleigh Dickinson University	19
United Negro College Fund	19
Health Associations:	
American Cancer Society (Morris)	19
American Diabetes Association	5
American Heart Association (Morris)	18
American Parkinson's Disease Association, Inc.	3
(The) Arthritis Foundation	19
Association for Retarded Citizens (ARC)	19
Cystic Fibrosis Research Foundation (N.J.)	12
Dope Open, Inc.	13
Epilepsy Foundation of America (N.J.)	9
Essex Northwest Lung Association	16
Morris County Association for Mental Health	19
Morris County Society for Crippled Children and Adults	19
Muscular Dystrophy Association of New Jersey	19
National Cancer Cytology Center	6
National Kidney Foundation	6
New Jersey Foundation for the Blind	11
New Jersey Society to Prevent Blindness	2
Project Hope	13
Miscellaneous:	
American Red Cross (S.E. Morris County-Madison)	14
American Red Cross (Morris County-Morristown)	14
Boy Scouts of America—Morris Council	17
Catholic Community Services	18
Cheshire Home in New Jersey	6
Devereux Foundation (Deer Haven)	1
Early Childhood Learning Centers of N.J.	3
Educational Assistance Fund of Morris County	12
Educational Broadcasting (WNET-Channel 13)	14
Family Service of Morris County	19
Federation of Protestant Welfare Agencies, Inc.	18
Girl Scouts of America—Morris Council	17
Hope House	4
Jersey Battered Women's Service, Inc.	2
Joint Council of Morris County YMCAs	2
Joint Free Public Library of Morristown and Morris Township	12
Market Street Mission, Inc.	14
Matheny School	1
Meals on Wheels	8
Morris County Free Library	8
Morris Minute Men	18
Morris Museum of Arts and Sciences	12
Morris Township Fire Department	4
Museum of Early Trades and Crafts	12
NAACP (Morris County Branch Office)	13
Neighborhood House	9
New Jersey Conservation Foundation	11
New Jersey Historical Society	13
New Jersey Shakespeare Festival	4
New Jersey Special Olympics, Inc.	2
Pluckemin Archaeological Project	1
Salvation Army	19
United Fund of Houston	18
United Jewish Federations of Morris-Sussek	1
United Way of Morris County	17

McINTYRE'S CENTER FOR GIFTED CHILDREN,
St. Paul, Minn., June 13, 1983.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
Washington, D.C.

DEAR CONGRESSMAN ROSTENKOWSKI: It is my understanding that the Oversight Sub-Committee of the House Ways and Means Committee has scheduled two days of hearings on Private Foundations to increase its awareness of services provided by foundations at the local level and to evaluate the continuing benefits of foundation activity.

I would like to add my expression of appreciation for foundation activity in general, and to the community foundation in St. Paul, Minnesota, in particular, for helping to institute the Community Resource Center at McIntyre Center for Gifted Children, a private preschool-3 Grade School for gifted Black children.

In 1982, The Saint Paul Foundation awarded $5,315 for a one year period to McIntyre Center to establish the Community Resource Center for parents of students in the Inner City Area of St. Paul, Minnesota. The purpose of the project was to increase parental access to educational materials for their personal use, to provide enrichment material for student's use, and to increase parental involvement at McIntyre Center.

Although the Resource Center has been operational for only a few months, it appears that participation and the frequency with which individual parents are involved at the Center is increasing as word of the Center spreads and as parents become familiar with the system. It is anticipated that the availability of the Community Resource Center will have a beneficial impact on the parents and the students involved with the Center.

Clearly, given the financial constraints on McIntyre Center, such a Resource Center would not have been established without foundation funds. McIntyre Center operates almost solely from tuition income; therefore educational enhancements, such as the Community Resource Center, would not be possible without an outside financial source willing to invest in the potential benefits of the service.

I hope that you, like the McIntyre Center, will recognize the value of foundation activity in local communities and support their ability to continue these effective services.

Sincerely,

MRS. BONNIE McINTYRE,
Director, McIntyre Center for Gifted Children.

STATEMENT OF JOHN H. CONWAY, JR., SECRETARY AND TRUSTEE, THE J. E. AND L. E. MABEE FOUNDATION, INC., TULSA, OKLA.

PRELIMINARY STATEMENT

1. For the reasons hereinafter set forth, it is respectfully urged that it would be appropriate to provide an exemption from the divestiture requirements of the excess business holdings provision of present law (Section 4943 of the Internal Revenue Code), with respect to the ownership of Mabee Petroleum Corp. by The J.E. and L.E. Mabee Foundation, Inc.

2. The J.E. and L.E. Mabee Foundation, Inc. (Foundation) was organized as a nonprofit corporation under the laws of Delaware on July 12, 1948. It is a private foundation within the purview of the Tax Reform Act of 1969. The principal business office of the Foundation is Suite 420, Williams Center Tower, Tulsa, Oklahoma 74103.

3. Mabee Petroleum Corp. (Subsidiary) is a Delaware corporation, organized on September 10, 1947. Its authorized capital consists of 30,000 shares of common stock of the par value of $100 per share, but only 19,132 shares have ever been issued. Upon incorporation, its stock was issued to Mr. and Mrs. John E. Mabee. Shortly after the formation of the Foundation, all of the 19,132 shares of common stock were contributed by Mr. and Mrs. Mabee to the Foundation. Since the receipt of the stock of Subsidiary from Mr. and Mrs. Mabee, the Foundation has continued to own all of the stock of that corporation as a wholly owned subsidiary.

4. During its entire existence, Subsidiary has been actively engaged in searching for and producing oil and gas as a source of income and asset value to the Foundation. It is engaged in no other business.

5. Since its inception, Foundation has made grants in excess of $130,000,000 to approximately 700 various charitable organizations. As of the end of the Foundation's

last fiscal year (August 31, 1982), these donations, totaling $122,036,516, were made to the following:

Educational	$64,351,258
Scientific, health research and medical	28,081,470
General	27,757,355
Religious	1,846,433
Total	122,036,516

The recipients of the grants in the "Educational" classification include approximately 150 non-tax supported educational institutions, primarily colleges and universities. The grants in the "Medical" classification were made to approximately 100 recipients, principally to hospitals, cancer and heart associations, and children's medical treatment centers. The recipients (numbering approximately 225) of the grants in the "General" classification include: (i) numerous branches of the Salvation Army, YMCA, YWCA, Boy Scouts, Girl Scouts, Camp Fire Girls and Goodwill Industries; (ii) orphanages; (iii) facilities for the aged, blind and handicapped; and (iv) museums. Grants in the "Religious" classification were made to approximately 225 churches of varying religious beliefs.

6. For the ten-year period commencing September 1, 1972 and ending August 31, 1982, the Foundation's grants, by years, are as follows:

F.Y.E. (August 31):	*Amount*
1973	$4,173,097
1974	5,776,791
1975	8,668,139
1976	9,887,029
1977	9,461,174
1978	8,278,871
1979	8,832,157
1980	8,743,807
1981	18,938,996
1982	12,035,640
Total	94,795,701

It is anticipated that for the current fiscal year ending August 31, 1983, grants in excess of $15,000,000 will be made by the Foundation.

7. Subsidiary has also recognized the importance of private philanthropy. For many years, it has made contributions to various charitable organizations, excluding the Foundation, substantially equal to the maximum amount allowable as a deduction for federal income tax purposes. During the ten-year period ending September 30, 1982, these contributions amount to approximately $4,700,000.

8. The current fair market value of the Foundation's assets is approximately $300,000,000. Of this approximate amount, two-thirds is attributable to its wholly owned Subsidiary. A substantial number of the Subsidiary's oil and gas properties have extended lives, and through the expenditure of substantial funds in the near future for repressuring systems (see discussion below), these properties will produce substantial income for the benefit of the Foundation in the extended future.

9. Under the Tax Reform Act of 1969, Foundation would be compelled by 1989 (a 20-year period from 1969), to dispose of at least 50 percent of its stock in Subsidiary, thereby cutting off the benefit of revenue from oil and gas properties whose lives are being extended beyond 1989.

10. Mr. and Mrs. Mabee had no children (natural born or adopted), and were never "managers" nor on the Board of Trustees who operate and guide the operations and charitable giving of the Foundation. Mr. Mabee died in 1961 and Mrs. Mabee died in 1965, leaving a substantial part of each of their estates to the Foundation.

CIRCUMSTANCES WHY RELIEF FROM DIVESTITURE RULES IS APPROPRIATE

11. Approximately 61 percent of Subsidiary's gross income and approximately 86 percent of its net income (before income taxes) is derived from four separate unitized oil fields located in West Texas. After many years of engineering studies and pilot field tests, the operators of each of these units have elected to proceed with tertiary recovery projects. While Subsidiary owns only a fractional interest in each of these units, recent cost studies indicate its share of the required capital expenditures for the year 1983–1989 will be in excess of $38,000,000. The obvious purpose of

a tertiary project is to enhance the oil recovery and extend the productive lives of the properties. The engineering studies indicate the tertiary projects will increase Subsidiary's revenue by threefold (from $128,000,000 to $438,000,000). However, substantially all of this increase in revenue will be in years subsequent to 1989.

12. Under the circumstances outlined above, the current divestiture requirements for foundation business holdings drastically affects the worth of Subsidiary and dramatically disrupts the Foundation's investment plans. First of all, Subsidiary must proceed with meeting the cash call from the operators for its share of the expenditures, to-wit, $38,000,000. If Subsidiary fails to pay its share, the operators will have a lien upon Subsidiary's oil and gas rights in each tract, its share of production, and its interest in equipment as security for payment of its share of expense, to gether with interest. The operators shall have the right to bring suit to enforce collection of such indebtedness with or without seeking foreclosure of the lien. In addition, the opeators shall have the right to collect from the purchases the proceeds from the sale of Subsidiary's share of oil and gas until the amount owed, plus interest, has been paid. In view of this "penalty," Subsidiary has no choice but to pay its share. This creates a classic "Catch 22" situation. Subsidiary has, or will have, spent huge sums of money to protect its existing properties and now the Foundation must sell at least 50 percent of its stock holdings in Subsidiary before it can reap the benefits that will result. Since the dollars involved are so large, the sale of a 50 percent interest to any one purchaser would be extremely difficult to accomplish. A potential purchaser would be most reluctant to make an investment of the required amount and end up not being able to control the business nor being able to consolidate its income, etc. This seems to dictate a sale of an 80 percent or more interest, thus narrowing even more the number of potential purchasers and placing the seller at a tremendous disadvantage. The other possibility is a public offering of the stock. This would involve large underwriting fees, legal, accounting, and engineering fees at the outset, plus additional annual fees for the same services (excluding underwriting fees) to meet regulatory requirements. More importantly, because of the time lag in revenues attributable to the tertiary projects discussed above, the investing public would be most reluctant to pay full price for the stock.

13. In short, if the Foundation is required to dispose of its stock holdings in Subsidiary, it, and in turn, the charities it supports, will lose millions of dollars.

ADDITIONAL REASONS WHY RELIEF FROM DIVESTITURE RULES IS APPROPRIATE

A review of the various Committee Reports and Treasury Reports leading to the enactment of present law as it pertains to business holdings by foundations clearly indicates that the tax abuses sought to be corrected are not involved in the instant situation.

14. Foundation does not own nor control numerous corporations involved in many varying enterprises. It owns only one subsidiary, which is engaged in a single business. Contrast this with the 26 separate corporations referred to in Example 1, the 45 corporations referred to in Example 2, and the 18 businesses referred to in Example 3 of the 1965 Treasury Department Report and Proposals and the 3 examples given in the Finance Committee Report of H.R. 13270.

15. Foundation does not place taxable businesses at a serious competitive disadvantage by (i) leasing business assets to its operating subsidiary, (ii) loaning money to its subsidiary, or (iii) supplying cash to increase capitalization. Contrast with the advances of funds and loans at low or no interest referred to in Examples 7, 8, 9 and 10 of the 1965 Treasury Department Report and Proposals, the discussion contained in the Finance Committee Report on H.R. 13270, and the discussion contained in Ways and Means Committee Report on H.R. 13270.

16. Subsidiary does not sell its products at prices lower (nor higher) than its competitiors. Contrast with the situation referred to in Example 14 of the 1965 Treasury Department Report and Proposals.

17. Foundation has not committed, nor is it willing to commit, funds to business operations which are failing or producing consistent losses. Subsidiary's operations are profitable and it is a substantial source of income for Foundation. Contrast this with the situations discussed in Examples 17, 18 and 19 of the 1965 Treasury Department Report and Proposals.

18. The tax devices discussed in the 1965 Treasury Report and Proposals under the heading of "Family Use of Foundations to Control Corporate and Other Property" were not used, nor are they available for use in the instant case. Mr. and Mrs. Mabee did not transfer part of their stock to the Foundation with the thought of transferring the remainder at a later date to younger members of their family. They transferred all of their holdings in Subsidiary. Neither did they cause the Subsidi-

ary to be capitalized or recapitalized with substantial blocks of nonvoting stock. Further, since the Foundation owns, and has owned, all of Subsidiary's stock since 1948 (i) there was no wish nor need on the part of the donors to have the corporation accumulate its earnings so that they could realize their gains by future sale of their stock at capital gain rates, (ii) there is no reason, at this date, for such accumulation, and (iii) there can be no such reason in the future. Also, since the Foundation owned all of the outstanding stock of Subsidiary during the lifetimes of Mr. and Mrs. Mabee (and continues such ownership), there was and is no attempt to pay high salaries in lieu of dividends.

19. A comparison of Foundation's key financial ratios with those of 50 major foundations reported in a recent survey by Price Waterhouse (see Appendix I attached) clearly reflects that the Foundation has been operated in an efficient manner and has made a large and distinctive contribution to the general welfare of the nation through its grants.

20. Granting the Foundation relief from the divestiture rules should have no adverse effect on budget receipts. On the other hand, if Foundation disposes of *all* of its stock in Subsidiary, there could be a substantial decrease in the nation's revenue. Under present law, the Foundation would pay an excise tax on the gain realized. On the other hand, the purchaser (if a business corporation) is able to transfer its purchase price to a depreciable and depletable basis and write such off at a 46% rate, resulting in an adverse revenue effect if such sale must be made.

APPENDIX I TO STATEMENT OF THE J. E. AND L. E. MABEE FOUNDATION, INC.

In 1983, Price Waterhouse published a booklet entitled "1982 Survey of Financial Reporting and Accounting Practices of Private Foundations." The foreword indicates that published annual reports or audited financial statements of 50 major and community foundations for years ended primarily in 1981 were analyzed. Excluded from the survey was any organization whose principal activity was that of an operating foundation, and any corporate foundation which finances its annual giving program primarily from current gifts from its corporate parent rather than investment earnings. Although the survey does not include exactly the 50 largest foundations, the foundations listed an analyzed are all larger foundations, as the intent was to make the survey data generally representative of large foundations.

The foundations ranked in asset value (at market) ranged from The Ford Foundation ($2,565,572,000) to Permanent Charity Fund of Boston ($71,844,000). The grants ranged from a high of $112,067,000 (The Ford Foundation) to a low of $3,231,000 (The Danforth Foundation).

In the course of gathering and summarizing information for this survey, selected financial ratios were computed. These ratios, as compared to the Mabee Foundation, are as follows:

Ratio	Average for 50 foundations	Range [1]		Mabee
		Fifth lowest	Fifth highest	
Yield: Investment income/assets at market (percent)	6.5	4.2	9.5	5.4
Payout:				
Grants awarded/investment income (percent)	85.0	59.0	129.0	116
Grants awarded/assets at market (percent)	5.5	3.7	8.8	6.3
Overhead costs:				
Administrative and investment expenses/assets at market (percent)	0.6	0.3	1.2	.05
Administrative and investment expenses; grants awarded (percent)	10.0	4.0	21.0	.79
Federal excise tax/investment income plus capital gains [2] (percent)	1.4	(11.0)	3.8	1.94
Change in assets: Assets at market/assets at cost (times)	1.4	1.0	3.8	3.3

[1] Fifth highest and fifth lowest ratios are presented as more representative of higher and lower ratios. The very highest and lowest ratios may be distorted by unusual factors unique to particular foundations.

[2] This ratio will differ from the statutory 2 percent tax rate due to differences between financial statement data and tax return data used to compute the tax, specifically expense deductions allowable and the tax basis of investments for purposes of computing taxable capital gains.

THE J. E. AND L. E. MABEE FOUNDATION, INC.,
Tulsa, Okla., July 5, 1983.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR SIR: Under date of June 17, 1983, The J. E. and L. E. Mabee Foundation, Inc. filed with you its written statement in connection with the above referenced hearings.

Based on the statements made and questions posed at such hearings, The J. E. and L. E. Mabee Foundation, Inc. has concluded that it would be helpful to the Subcommittee in its deliberations to supplement its statement to cover one additional factual situation.

In the summer of 1976, The J. E. and L. E. Mabee Foundation, Inc., by letter to 17 of the nation's major oil and gas corporations, invited sealed bids for all of the stock of its Subsidiary. The invitation letter contained financial statements, detailed individual property descriptions reflecting production history and production curves, and a draft of a proposed Agreement for Purchase and Sale of Stock.

Nine of the "invited" corporations submitted written bids. The bids were opened on August 2, 1976, with the highest being slightly in excess of $100,000,000. Based on its own engineering reports and knowledge of the properties, the Foundation voted to reject all bids as not being truly representative of the value of Subsidiary's assets. Hindsight has shown this decision was a wise one.

Subsequent to this sale attempt, the tertiary project developments (discussed in the Statement filed with the Subcommittee on June 17, 1983) have made a new sale effort impractical and imprudent.

In short, the Foundation has not sat idly by. It made a diligent and expensive effort to dispose of its stock holdings in Subsidiary.

Respectfully submitted,

THE J. E. AND L. E. MABEE FOUNDATION, INC.
By JOHN H. CONWAY, Jr.,
Trustee and Secretary.

MEHARRY MEDICAL COLLEGE,
Nashville, Tenn., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I understand that the Subcommittee on Oversight of the Committee on Ways and Means is examining the role of foundations and proposed legislation aimed at fostering their effectiveness in American society.

As President of an institution that is a frequent recipient of foundation support, I would like to offer the following comments:

Foundation support for Meharry Medical College has, over the years, been invaluable in sustaining the mission of this unique national resource. Meharry Medical College was established in 1876 and is the oldest private and predominatly black health sciences academic center granting doctoral degree in dentistry, medicine, and the bomedical sciences. The College has graduated over forty percent of the nation's black physicians and dentists. Significant numbers of these graduate health care providers practice in the Southeast and urban inner cities where the highest numbers of blacks and other underserved people reside. Even in these days of "affirmative action," the College still admits ten percent of the nation's black medical students and fifteen percent of those enrolled in dentistry. It should also be pointed out that forty-six percent of the black faculty holding appointments at majority medical schools (where many would not have been accepted as students) are graduates of Meharry Medical College.

Early and sustained support from foundations provided the vital impetus for the training of health care practitioners to meet important unmet national needs. The restatement of the College's mission in the late 1960's, and the subsequent expansion of Meharry's physical facilities and programs, benefited not only from the availability of federal funding, but also from generous foundation participation, including major programmatic leadership grants of $5 million from the Robert Wood Johnson Foundation, $700,000 from The Commonwealth Fund, $1.5 million from the Kresge Foundation, $1 million from the Alfred P. Sloan Foundation, $500,000 from the W. K. Kellogg Foundation, and $200,000 from the Andrew W. Mellon Foundation, among many others.

Grants of $100,000 each from the Exxon Education Foundation and The Merck Company Foundation illustrate the importance of corporate/foundation linkages in previous support of Meharry. A long-term effort to improve the quality of basic science instruction for minority medical students is one prominent instance in which foundation participation—most recently by the Sloan and Mellon Foundations—was able to bring about results that would not have been attained with federal funding alone.

Later, in 1980-81 Meharry was able to respond to a critical need for reorganization and academic and financial repositioning largely through timely support of the Robert Wood Johnson Foundation ($1.4 million). The Commonwealth Fund, the John D. and Catherine T. MacArthur Foundation ($300,000 each), and the Prudential Foundation ($200,000).

More recently, federal budget cuts have had an especially severe impact on historically black institutions like Meharry, particularly in the area of student financial aid. Generous and imaginative foundation support has enabled Meharry not only to maintain some student financial assistance but also to integrate into the financial aid system incentives geared to improving our students' academic performance.

Foundation support has also been instrumental in helping Meharry attract scholars whose research interfaces with the mandates of federal agencies like the National Institutes of Health and the National Science Foundation. As federal distress grant funding for Meharry is being phased out, a $20 million foundation investment in academic renewal programs will be a key element in the institution's efforts to assure its future viability. Already new commitments have been received in the amount of $5 million from the Robert Wood Johnson Foundation, $1 million from The Commonwealth Fund, and $1 million from the MacArthur Foundation. More than $9 million has been raised so far toward the overall goal of $33 million for academic renewal; of this, over $7 million has come from foundations. A list of important foundation contributors is appended.

Increased foundation support is at the core of our plans for academic renewal. While the largest portion of these funds are designated for increasing the size and diversity of the faculty, smaller aliquots are projected for the development of Centers of Excellence, scholarships and student aid, library and facilities revitalization. Recruitment and appointment of a more competitive faculty under academic renewal will significantly enhance the College's potential for increased extramural financial support from research grants and projects to replace the scheduled decrease (and ultimate elimination) of the federal financial distress award. It is anticipated that the programmed use of the foundation awards will expand the pool of investment donors to be derived from the private and corporate sectors as well as Tennessee and other states in the region.

Equally noteworthy is the record of support foundations have shown for Meharry's non-traditional role. Meharry, as a black institution that focuses on the needs of the underserved and disadvantaged, has often lacked the usual sources of financial support from wealthy alumni, patients, individuals, and corporations. Foundations, because of their uniquely universal perspective on the long-term needs of society, have consistently come to Meharry's support at times when more traditional donors would not. Foundation initiatives—such as challenge grants from the Joyce Foundation for corporate gifts and from the Bush Foundation for alumni giving—have been decisive in bringing about increased support from other sectors. More generally, foundation grants set a pattern and act as a magnet for involvement by other private charitable donors. This underlines the fact that foundations often exhibit more innovation and leadership in addressing unmet needs that would otherwise be neglected.

Meharry unequivocally supports positive action on H.R. 3043, and I hope that the Ways and Means Committee, and the Congress, will look closely at ways to strengthen foundations as a way of encouraging private initiatives to meet some of our nation's urgent needs. I would appreciate this latter being made part of the official hearing record.

Thank you for your attention.

Sincerely,

David Satcher, M.D., Ph.D., *President.*

MEHARRY MEDICAL COLLEGE

Foundation Contributors to Academic Renewal: Amax Foundation; Charles H. & Bertha Boothroyd Foundation; Allen Bradley Foundation; Bush Foundation; Capital Cities Foundation; The Commonwealth Fund; Gannett Foundation; General Foods Fund; Herman Goldman Foundation; and The Gordon Fund Foundation.

Hearst Foundation; Carl J. Herzog Foundation; Robert Wood Johnson Foundation; Frederick J. Kennedy Memorial Foundation; Merrill Lynch Foundation; Edward S. Moore Foundation; John D. and Catherine T. MacArthur Foundation; J. Aron New Orleans Corporate Fund; PepsiCo Foundation; Alfred P. Sloan Foundation; Joseph E. Seagram & Sons, Inc. Fund; Union Pacific Foundation; and Wollenberg Foundation.

MELLI, SHIELS, WALKER & PEASE, S.C.,
Madison, Wis., May 24, 1983.

Re private foundation rules.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I noted in the May 11, 1983 issue of CCH Standard Federal Tax Reports "Taxes on Parade" that the House Ways and Means Subcommittee on Oversight has scheduled hearings for June 27 and June 28, 1983 concerning rules governing private foundations. Having just completed work on a Form 990-PF for a small private foundation with assets of less than $20,000, I am again struck by the complexities in this area. In light of the recent actions of the Congress and the administration to reduce the role of government and increase the role of private philanthropy, one means of promoting these goals would be to ease the reporting burdens on small private foundations. While it is recognized that there are certain abuses that the current legislation is designed to combat, it is my view that there should be a di minimus point below which all of the complex reporting requirements, reflected by the Form 990-PF, should be eliminated and a simplified report substituted.

While I do not wish to present any oral or written testimony to the subcommittee in this regard, I do desire that these views be considered as part of the subcommittee's deliberations. Thank you for your attention to this matter.

Very truly yours,

MELLI, SHIELS, WALKER & PEASE, S.C.
JAMES A. JAEGER.

THE METHODIST HOSPITAL,
Houston, Tex., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on House Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: As the Oversight Subcommittee of the Committee on Ways and Means prepares to hold hearings regarding the activities of private foundations, The Methodist Hospital would like to take this opportunity to relate to the Committee the positive influences resulting from the generous philanthropic support of these foundations on our institution.

As a not-for-profit, religiously oriented institution providing health care services to the community, The Methodist Hospital and the voluntary hospital industry as a whole have traditionally depended on donations from private foundations to supplement other sources of operating funds and capital. Such funding has supported all areas of our work at Methodist, including patient care, medical education, and research. Foundations have always been instrumental in providing the support for many unique programs and services at The Methodist Hospital which have proven to be successful and extremely beneficial to the community. The implementation of many innovative ideas and techniques might have been impossible if not for the willingness of private foundations to respond to the needs of institutions such as ours.

One example of progressive foundation activity has been the creation of the Sid W. Richardson Institute for Preventive Medicine of The Methodist Hospital. Opened entirely as a result of private foundation funding for its total construction and furnishings, the Institute for Preventive Medicine is dedicated to the principle that hospitals should play a major role in preventing diseases as well as curing them. The Institute's purpose is the development and support of programs designed to prevent atherosclerosis and other cardiovascular diseases through identification of abnormal risk factors, screening for disease, guiding changes in lifestyle patterns in order to promote better health behavior with regard to diet, smoking, exercise and psychological stress, and to increase the individual's and the public's knowledge of good health habits and how to achieve and maintain them. The Institute for Preventive Medicine comprises 32,000 sq. ft. of space in The Methodist Hospital's Scurlock Tower of the Total Health Care Center. In addition to offering the aforementioned wellness programs, the Institute also features a health and fitness facility containing a gymnasium, human performance laboratory, and other facilities, and a gourmet restaurant that specializes in the preparation of cardiac prudent meals.

Due to the outstanding commitment of the Sid W. Richardson Foundation of Ft. Worth, Texas, The Methodist Hospital has been able to build, furnish, and initiate operations of this Institute, one of only a few facilities of this kind in the country. After more than two years of operation, the Institute has sound working relationships with numerous corporations and community groups which are now willing to support and actively participate in our programs and services related to the concept of preventive medicine. Without initial funding from private foundations, however, it is unlikely that the Institute for Preventive Medicine, or its successful concept, would be a reality in the Houston community today. We feel certain that this is but one example of the various activities promoted by private foundations which should not only be allowed, but rather should be enthusiastically encouraged in view of the recently reduced federal grant monies available to not-for-profit institutions.

The Methodist Hospital appreciates the opportunity to comment on foundation activity, and we would request that our remarks be made an official part of the Committee's hearing record. Thank you for your consideration.

Sincerely,

LARRY L. MATHIS,
Executive Vice President and Chief Operating Officer.

METROPOLITAN STATE UNIVERSITY,
St. Paul, Minn., June 15, 1983.

Mr. JOHN J. SALMON,
Chief Counsel,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: It is my understanding that the Oversight Sub-Committee of the House Ways and Means Committee has scheduled two days of hearings on Private Foundations to increase its awareness of services provided by foundations at local levels and to evaluate the continuing benefits of foundation activity.

I would like to add my expression of appreciation for foundation activity in general, and to the Community Foundation in St. Paul, Minnesota, in particular, for helping to initiate the Minority Services Program at Metropolitan state University.

The Saint Paul Foundation has awarded approxomately $130,000 over a three year period to initiate a Minority Service Program at the University. The purpose of the program is to increase paticipation of minority students in the upper level, non-traditional curriculum provided by Metro U and to provide support services which will enable an increased number of minority students to complete baccalaureate degree. To date evaluations of this program are extremely positive. The numbers of minority students enrolled at Metro U have dramatically increased, support services have enhanced their educational experience, funds from other sources have been attracted to the program, and the program activities are becoming integrated into the general administrative plan of Metro U.

Clearly, without foundation funds, the Minority Student Services Program would not have been undertaken to the degree currently possible. The grants over a three year period have helped this non-traditional university to provide minority student access to an upper level college experience which might not otherwise have been possible.

I hope you will recognize the value of foundation activities in local communities and support their ability to continue these effective services.

Sincerely,

REATHA CLARK KING, *President.*

SPECIAL SCHOOL DISTRICT NO. 1,
MINNEAPOLIS PUBLIC SCHOOLS,
Minneapolis, Minn., June 24, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing in reference to the June 27–28, 1983, hearing scheduled by the Oversight Subcommittee of the House Ways and Means Committee relative to private foundations.

The Minneapolis Public Schools serves the most diverse student body in the State of Minnesota. Our relationship with foundations go back to the mid-1960's when we received a foundation grant for support of a neurological study for some high-need students. During the intervening years, the Minneapolis Public Schools received a number of foundation grants which have helped us in many areas.

A 1970 grant allowed us to begin to provide special services to American Indian students. Our American Indian population is one of the largest of any urban school system in the country. A foundation grant allowed us a head start on other urban school districts in beginning to provide services for these students.

We have had a number of foundation grants that allowed us to reach out and attempt new programs which had a risk factor and which would have been difficult to fund under our basic local property tax and state funds. Foundations have allowed us a flexibility that we would not have had otherwise.

In 1972, we received a grant from the Athwin Foundation which allowed us to develop a School Support and Business Relations Program. That program was funded for two years by the Foundation. It was so successful that it was picked up by the District and celebrated its tenth anniversary this May. Over 200 companies have followed up this grant and make donations of excess supplies, equipment, materials, and other resources, which have markedly expanded the educational opportunities for the Minneapolis students.

Foundations have helped us develop programs that have leveraged other resources. The General Mills Foundation supported a Resource Counselor Program for four years. The Resource Counselor Program allowed us to have a full-time counselor in each of our three administrative areas who helped build bridges between the public schools, the agencies serving our students, and the broader business community. Our local budget would not allow us the benefit of this program. We are still benefiting from the contacts developed through the Resource Counselor Program.

Foundations have allowed us to expand our services beyond that which could be provided by a regular budget. A grant from the Honeywell Foundation allowed us to demonstrate services to gifted and talented students in an inner-city school. The program not only provided additional teaching staff, but used Honeywell volunteers to support the program. This one-school program sponsored by a local foundation has become one of the models for a five-year planning program to provide expanded services for gifted and talented students.

Financing of public schools with state and local tax dollars placed restrictions on program offerings. Foundation funds have allowed us to try new approaches, to provide training for staff, and to provide experiences for students they would not otherwise have.

In addition to the new programs, to programs which we could not afford without foundations, and the training opportunities, foundations have given us small amounts of money that have allowed us to add the special human touch that is important in an urban school district. As an example, a young student from one of our inner-city junior high school's died several years ago in a tragic drowning. The body was not found for several days. The family was on welfare and the burial funds for a welfare family were not enough to cover the special care the body needed. The faculty at the boy's school felt that it was important for the students to share their respect for this young man and his family. A call to a foundation gave us the special funds to provide a funeral that was important not only to the young man's family, but to the faculty and students at the school he attended. I can give you countless situations where foundations have allowed us to provide that extra special caring.

As you study foundations, I would urge you to recognize that they play an important part in the life of urban institutions such as the Minneapolis Public Schools. A grant from the Bush Foundation allowed us to work with Indian-based curriculum to begin to make the contributions of our American Indian citizens a meaningful part of the curriculum of all Minneapolis students. Our elementary curriculum now has a special unit on the input of American Indian citizens. We did not have the public resources to develop that curriculum without the initial support from a foundation.

The availability of foundation funds has also been a significant resource to Minneapolis Public Schools staff. A teacher or a team of teachers and parents with a creative idea have been able to develop programs to present to foundations. In many instances, the foundation that received the grant has pulled other people together to help staff proceed to expand opportunities for students. We need to keep that creative spark alive.

If you need any further materials on the role of foundations with the Minneapolis schools, we would be happy to provide you with same.

I request that this letter become an official part of the hearing record.

Sincerely,

RICHARD R. GREEN,
Superintendent of Schools.

MINNEAPOLIS—CITY OF LAKES,
Minneapolis, Minn., June 27, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: Minneapolis has a city government famed for its close working relationship with private foundations and businesses. Many of the most pressing needs of our citizens could not be met by municipal government without the aid of foundation funding.

I therefore wish to take this opportunity to inform you of the valuable contributions which private foundations make to the high quality of life in Minneapolis. I hope that this information will be useful to the oversight subcommittee of the House Ways and Means Committee as it conducts hearings on the role of and need for private foundations in American life.

I have chosen the following four examples of foundation grant programs in Minneapolis to illustrate some major types of contributions which foundations make to our city. Please understand that they are only a few examples among dozens which would be offered.

The Minneapolis/St. Paul Housing Fund, established by the McKnight Foundation in May, 1980, illustrates the fact that grant funding can make contributions to those in need which would otherwise be impossible to achieve. The $17 million fund initiated a loan program designed to make housing for low- and moderate-income families affordable in a market with high interest rates. Equity loans are made to low-income rental unit developers to ease the process of building, and rent payments of low-income families are subsidized. Additionally, loans are provided to moderate-income families to help them meet their down-payment and monthly payment requirements on homes in newly developed areas, and housing contruction itself in these areas is aided through mortgage revenue bonds which are part of the government/foundation package. By the end of 1982, $9.4 million had been spent to fill 2555 units, or 80 percent of the initial housing placement goal. Without the program, the concerned families could not have afforded ownership.

Emergency food and job programs to which foundations have made contributions have greatly eased Minneapolis' burden in the face of budget cuts to social services programs. Especially notable are the Pillsbury Foundation grant which matched individual contributions of food to the Metro Food Share food-bank beginning in February, 1983, and the General Mills Foundation effort to facilitate discussion of the adequacy of the emergency food network. Two million pounds of food have so far been provided to the area's hungry. In addition, the McKnight Foundation contributed $1 million in 1982 and $1.25 million in 1983 to provide 6-month jobs for 300 people who had been unemployed for 90 days but were ineligible for public assistance. Then on June 16, the Minneapolis Foundation granted $100,000 to provide emergency assistance in the form of back rent and mortgage payments and child care assistance during job training and retraining periods for unemployed workers. In those ways, foundation action has kept Minneapolis residents alive and functioning despite economic difficulties aggravated by federal funding cut-backs.

Grants to non-traditional and newly-emerging organizations have been provided through the McKnight Foundation Neighborhood Self-Help Initiative Program, designed to support neighborhood organization efforts in the areas of neighborhood improvement, provision of new economic and social opportunity, improvement of the quality of life, self-determination and institutional change, and improvement in the quality of services provided. Beginning in 1981 and slated to continue for 10 years, the McKnight program provides $700,000 per year to Minneapolis neighborhoods in the belief that the neighborhood is an effective structure which residents may use to think, act and work together to meet their own needs.

Finally, a grant program which fosters collaboration between a public institution and private foundations is the Greater Minneapolis Chamber of Commerce provision of business and foundation community funding for the Minneapolis Public School System's Five Year Plan of April, 1982. $110,000 was raised from the foundation and business community to finance planning which aims to attract students to the schools, retain students until graduation, and assure for students the achievement of basic skills and understanding required for effective participation in society. Thirty-three foundations and businesses have contributed to this program, which is an answer to the charge of declining educational systems in our nation.

Thank you for allowing me to express to members of Congress my great appreciation for private foundation funding. It is my hope that foundation grants will continue to make valuable contributions to the City of Minneapolis, allowing us to maintain our high standard of living.

Sincerely,

DONALD M. FRASER, *Mayor.*

STATEMENT OF NANCY MCCLASKEY GLASGOW, PRESIDENT, NATIONAL ASSOCIATION OF FOUNDATIONS, INC.

Mr. Chairman and Members of the Committee, on behalf of the Private Donor Foundation Members of The National Association of Foundations, Inc., I am happy to present this written statement to the Subcommittee on Oversight of the Ways and Means Committee of the House of Representatives. We thank the Chairman, Hon. Charles B. Rangel, D. of New York, for the intensive form given in the Press Release No. five on Tuesday, May 3, 1983. The form gives our Membership an opportunity to study the issues and prepare answers. It also gives them the chance to present any problems. NAF is the only trade association serving the needs of Private Donor Foundations exclusively. We are a small organization with fifty members. Our only source of income is from Membership Dues. We are permitted under the law to present statements both written and oral to the Congressional Committees having jurisdiction over the Private Donor Foundations. We supply our Membership with the necessary material from the Internal Revenue Service. Our Members are out of town so the form gives them the opportunity to participate whether or not they are able to attend the Hearings.

One of the problems I have found in contacting the Private Donor Foundations is the large number that have given up during the past ten years. While there are still a very large number in operation that total is slowly going down. Many new Private Donor Foundations are founded each year but the number is much smaller than in the recent past. The Private Donor Foundation Movement of the United States has suffered during the last ten years just as the rest of the population. In the case of the foundations the rules governing investment tend to limit them in investment and this has a definite affect on the amounts that are then available for distribution to worthwhile causes. It is necessary to be careful and prudent in dealing with the money of others as the Congress well knows. The rules governing investment practices tend to restrict the foundations so that many of them cannot take advantage of some of the new investment opportunities now on the market that were not in existence ten years ago. I attended the Hearing held at the Ways and Means Committee in March of 1973, which laid the groundwork for much of the legislation during the last decade. We have come a long way gaining many new tax benefits which are all to the good of the Private Donor Foundations and to the great American Public too, as they are the real gainers in this case. What other group in the population puts so much of what they get now back into the development of the country? It is an honor to be able to represent such a truly worthwhile group of people. I commend the Congress and the Ways and Means Committee for their wise forsight to hold these Oversight Hearings every ten years to give the people a chance to come before them and tell what their situation is and what needs to be done to effect the necessary changes that will occur.

During the past ten years, much time has been devoted to the problem of excess business holdings of Private Donor Foundations. This was the focus of the Hearings at the Internal Revenue Service on September 10, 1979, when the Carter-Mondale Administration proposed legislation to force most of the Private Donor Foundations in the United States to dispose of stock of many closely held corporations in a time limit of eighteen months. Thank God, we had an honest Subcommittee Chairman at the Ways and Means Committee who sent word to the Treasury he would not hear such arguments and the proposal never became law. I attended the Hearing on September 10, 1979 held at the Internal Revenue Service Headquarters and anyone present knew it meant the fate not only of the Private Donor Foundations of the United States, but the entire stockmarket as well, and certainly it would have brought on a complete collapse of the economy of the United States of America!

Two Hearings on this subject were held at the Senate Finance Committee, Subcommittee on Taxation and Debt Management, Hon. Robert Packwood, Chairman. The first was in regard to a large California foundation which had been ordered by the California Courts to dispose of its fifteen percent interest in all the Savings and Loans of the United States. The second was in regard to a huge Insurance Company worth billions. Their family foundation was ordered by the law to dispose of stock of a closely held corporation. In both of these cases the foundations had gaint holdings that could not be settled in a short time without severe loss to the foundation. Our NAF Members are not involved. We are watching as what happens to the very large Private Donor Foundations does have an effect on the fortunes of the smaller ones as well especially in regard to any laws that might be enacted for the benefit of all the Private Donor Foundations.

Our NAF Members have worked on all the tax legislation concerning the Private Donor Foundations during the past ten years. We have submitted both written and oral statements to the two Congressional Committees having the jurisdiction over the Private Donor Foundations. I have personally written to the Chairman of Subcommittees conducting the Hearings and also to the Members of Congress introducing legislation to have benefits placed in the law for the Private Donor Foundations. It is the custom of the Congress of the United States of America, to award tax benefits to the national association operating in the field in question. In our case, the Private Donor Foundations.

When you consider the many millions of people in this great nation, and there are estimated to be over half a million millionaires in the United States and there are only about twenty-two thousand Private Donor Foundations listed in the National Foundation Data Book, published by the Foundation Library Center, then you begin to see how small a group there worthy foundation people are. Of this number only about fifteen thousand are really viable as such being big enough to do some active work. The founding fathers never intended this nation to be a welfare state or to be a nation where the politicians keep the millions placated with "bread and circuses." As a Member and former Vice-Chairman of Pages, of the Daughters of The American Revolution, having one of my ancestors as the principal financial backer of the American Revolution who loaned his home, for Gen. George Washington's Headquarters at Morristown, and pledged his life and sacred honor to establish this nation, I know beyond all doubt what the intention was when this United States of America was founded! It was intended that we be a great, strong, free people!

The Private Family Foundations are putting back into the country some of the wealth that was given to them through hard work and perserverance. They are a good worthy group who deserve to continue their work. The National Assoication of Foundations, was founded by my late father, Dr. Charles L. McClaskey, J.D., who intended to provide the same service to the small and medium size Private Donor Foundations that could only be afforded by the very large foundations. I am enclosing two letters written to me by our Senior Member, Mr. J. Walter Juckett, Trustee of the Sandy Hill Foundation, of Hudson Falls, New York. Mr. Juckett has been with us from the early days of this Association and he has been a loyal and dependable Member of NAF. I am also enclosing a copy of the Code of Ethics of the Association.

Respectfully submitted to the Congress of the United States.

SANDY HILL,
Hudson Falls, N.Y., May 5, 1983.

MS. NANCY MCCLASKEY GLASGOW,
The National Association of Foundations,
Washington, D.C.

DEAR MS. GLASGOW: In reply to your recent membership bulletin in which you were not yet able to give a date for the Ways & Means Committee hearings for private donor foundations, I would like to state the case of the Sandy Hill Foundation.

For the last thirty-two years, since its founding in 1951, we have tried faithfully to follow the law, giving each year the entire income of the principal for charitable purposes to duly IRS approved causes, and conforming to gifts totalling the required investment return on the amount of the principal relative to its market value.

Sandy Hill Corporation is 125 years old this year. My late father and I were invited here to save it in 1936 when it was down to the lowest point in its history, both in sales and financially, with only 35 people working three days a week. Today it has been possible to expand our operations so that we have approximately ten times the number of employees, with sales approximately 300 times what they were the year before we came in 1935.

Not only did gifts of common stock enable us to increase our corporation's charity giving by the amount of the Foundation's income, but it also made it possible for me to avoid selling some of my common stock which would have meant giving up the control of Sandy Hill Corporation at the time of my father's death on May 14, 1957, of my mother's death on June 3, 1960, and my wife's passing on October 25, 1969, for inheritance taxes.

With the ten-year law in which the Foundation had to divest itself of all the common stock of the corporation except 2%, we were fortunate to be able to survive. However, during the years when we were coming along, it would have been impossible for me to have paid the inheritance tax on the controlling interest in the company without the existence of the Foundation. Unfortunately, our long term bank loans had required that my family continue in control during those years.

The chances of the possibility of my having been able to sell the company after the deaths of my father, mother and wife, would have been very slim without putting it into the hands of people who might have chosen to move or liquidate the business, which would have resulted in putting several hundred people out of work.

My family feels it our moral obligation to continue this splendid firm for the sake of our 350 employees, although we have had many good offers to sell it.

I wonder how many other corporate executives have found themselves in the same situation that I inherited, which would have caused a calamity in their business.

Why punish the good foundations for the lack of disciplining the ones that transgress?

Most sincerely,

J. WALTER JUCKETT,
Trustee, Sandy Hill Foundation.

SANDY HILL,
Hudson Falls, N.Y., May 17, 1983.

MS. NANCY MCCLASKEY GLASGOW,
The National Association of Foundations,
Washington, D.C.

DEAR MS. GLASGOW: Thank you for your Press Release #5 of May 3, advising my Foundation of the hearings to be conducted on June 27 and 28.

In the case of the Sandy Hill Foundation and other private foundations in this area, private foundations are contributing in a substantial way to all of the recognized I.R.S. approved charities. In the case of the Sandy Hill Foundation, we also have a special scholarship program in conformity with the I.R.S. regulations, as well as making gifts for charitable, scientific, literary or eductional purposes. 19 scholarships are being granted this year.

Since our inception, none of our trustees has ever received any compensation or any expense money in connection with the foundation's work; therefore, outside of the 2 percent tax, the annual audit charge and an occasional legal opinion on the eligibility of a potential recipient, the entire income of the foundation has been paid out in full annually since its inception in 1953.

The tax reform act of 1969 has virtually prevented our placing anymore of the assets of Sandy Hill Corporation in the Foundation. There are times when the self dealing rules of the I.R.S. make it impossible to handle some valuable gifts of restrictive securities which would definitely benefit the foundation and yet would not detract in any way from its income.

It is too much to assume that an outside corporation holding 30 percent of the stock of the parent corporation to the foundation has any influence on the foundation's giving, as in our case, none of the trustees are or will be on that corporation's payroll and it has never made a request of this nature nor has it any intention of so doing. As long as the outside corporation does not control the parent corporation, it should be possible for that corporation to be considered exempt from the classification of a disqualified person. We have no objection to the 2 percent excise tax, but it does discourage some individuals and corporations giving to the foundation because when the I.R.S. places any restrictions on a charity organization, it is automatically discouraging giving to it.

Sincerely yours,

J. WALTER JUCKETT.

NATIONAL COALITION OF 100 BLACK WOMEN, INC.,
New York, N.Y., June 18, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: The National Coalition of 100 Black Women eagerly supports Representative Barber B. Conable's bill, H.R. 3043.

As you know, if enacted, this legislation would provide individuals the same tax incentives to make gifts to foundations as they now receive when they make gifts to other charitable institutions.

We believe this important legislation would stimulate and serve as a catalyst for the creation of more foundations.

Most certainly, given the serious cut backs in social programs at the federal level, organizations like the Coalition of 100 Black Women are increasingly looking to the support of the foundation world to help realize program efforts targeted at community development.

We urge your passage of this key legislation.

Respectfully,

JEWELL JACKSON MCCABE, *President.*

NATIONAL COALITION OF 100 BLACK WOMEN, INC.,
New York, N.Y., June 18, 1983.

Congressman CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Ways and Means Committee, Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN RANGEL: The Coalition of 100 Black Women, founded in 1970, is a non-profit, tax exempt, 501 C3 organization. The National Coalition of 100 Black Women, headquartered in New York City, is approximately 5,000 women of diverse leadership and professional experiences from 19 states throughout America.

This network was created to meet the expressed desire for a vehicle to serve the myriad needs of the contemporary Black woman, her personal and professional growth, and her concern for her community's complex issues.

In recent years, the organization has gained a substantial track record in role modeling with minority youth. This "one-to-one", hands-on, sharing experience has taken various forms in this past decade of the Coalition's development. We have worked with young Black women of college age, (see attachment A) preparing them for the realities of the world of work. We developed and executed a career exploration role modeling project (Career Exploration 82) for inner city high school age youth in concert with Hunter College and the New York City Board of Education (see attachment B).

This latter project was supported in total by the Commonwealth Fund at $200,000. This effort resulted in a 93% completion rate by the students and will be repeated this summer underwritten again by the Commonwealth Fund at $171,000. Results from the evaluation of Career Exploration 82 indicate that it was a well-run program that was successful in meeting its stated objectives of providing quality employment and raising students career expectations.

This collaborative effort is a unique initiative coordinating the volunteer resources of the Coalition of 100 Black Women and utilizing existing educational support systems.

Moreover, the Commonwealth Fund has taken an important leadership role in program initiatives related to disadvantaged youth by funding our most recent program effort focused on minority teen mothers. This new role modeling program approach addresses one of America's growing problems—teenage pregnancy. The program is designed to counteract the severe and escalating social and economic problems related to this issue.

The working title of the project is "Women in Partnership: Young Black Women in Transition". This experimental effort will be targeted in ten cities throughout the country and will reach 500 teen mothers. The objectives of this project include the completion of high school, the development of jobs and/or college placement, and will work to deter a second pregnancy within a three year period. This $1.5 million dollar project has been supported by the Commonwealth Fund at the level of $550,000.

Furthermore, the support of the Commonwealth Fund has enabled the Coalition of 100 Black Women to carve out a niche in volunteer action on behalf of the Black community.

Lastly, its support is helping to establish a growing institution, vital to Black women and the community-at-large.

Respectfully,

JEWELL JACKSON MCCABE, *President.*

NATIONAL COALITION OF 100 BLACK WOMEN

PROJECT TITLE: WOMEN IN PARTNERSHIP: YOUNG BLACK WOMEN IN TRANSITION

(By Jewell Jackson McCabe)

This proposed program simply stated would build a new approach to counteract the severe and growing problem of Black "babies bearing babies" in a society already frought with increasing social malaise; which continues their cycle of welfare dependency.

At the core of this new approach is Black leadership and our responsibility to redress this dangerous and growing trend. The Coalition of 100 Black Women is a national organization of Black professional women, based in New York City, with an intense sense of responsibility regarding the social well being of young Black women caught in a maze of economic and social despair. The Coalition members stand ready to act as role models for young Black women 16 to 17 years old that have completed their first two years of high school and have recently given birth (first baby) or are in their third trimester of a first pregnancy. The "one-to-one" relationship between the teen and the Coalition member would establish a relationship whereby the teen would ultimately become an independent citizen capable of taking direct responsibility for her own life.

The teen will be properly motivated to achieve basic education at the secondary level and job placement in the mainstream of our society. The obvious result is a more secure and positive direction for her offspring.

The proposals main objectives in a three year period are as follows: the teen mother will graduate from high school; the teen mother will not become pregnant again within a three year period; and the teen mother will either obtain a job or enter first year of college. In addition, the Coalition's goal will be the organizing of a role model corps of Black men to design an approach that assists the teenage fathers of these babies born out-of-wedlock to achieve directed educational and employment opportunities.

As stated earlier, the program would serve youngsters who have recently become parents for the first time, have completed two years of high shool, and have already demonstrated tenacity and ambition in some way. These are young people who, finding themselves overwhelmed by the double responsibilities of parenting and self-development, could easily be headed toward a lifetime of welfare dependency and family instability. This program would work with those for whom something crucial is also missing from their lives: a strong, consistent role model who can help them define and pursue their own educational and career goals while properly carrying out the duties of a new parent.

Each role-model would be backed up by a professional staff member from a local Big Sisters or a Big Brothers organization. These professionals would screen teenage parents and role-models referred to the program. They would also match the role-model and the young parent and, working with both, set goals, measure progress, and help solve problems. Then they would personally "case manage" existing community services the teenager needs. That is, they would arrange for school placements, family planning services, pediatric care, and day care services, monitoring attendance and achievement and intervening when appropriate.

No new service organization would be created to develop or manage the program. Instead, several existing national organizations would combine their particular strength in a new partnership. The national organizations that have helped the Coalition develop this concept and stand ready to collaborate on a more detailed proposal include Big Brothers/Big Sisters of America, The National Urban League, and Planned Parenthood Federation of America.

The program would aim to work with 25 to 50 teenage mothers, plus fathers, in from six to ten cities across the country. To date, meetings and telephone conversations have been held with principals of the affiliates of The National Coalition, Big

Brothers/Big Sisters of America, and the Urban League in New York, New Jersey, Alabama, California, Indiana, Michigan, Pennsylvania, Tennessee, Texas, and Washington, D.C. We consider these cities important sites for a national demonstration project.

We are requesting $550,000; $50,000 would support development of the workplan for the program, its evaluation, and the dissemination of results. The plan would describe refined objectives, specify the roles of all major organizations participating, identify the participating cities and sites, and contain a total budget. These funds would also underwrite the costs of meetings with potential co-funders.

We have identified over fifty programs in most main cities that provide some type of assistance to the target group of teenagers. After reviewing reports of these other programs and we found that if teenage parents are to develop careers and economic independence, additional support is necessary. The short-comings this effort hopes to redress include: youth employment agencies serve few teen parents and are ill equipped to do so; most teenage mothers lack a "career sense" and see jobs only as temporary work for extra money; teenage pregnancy programs often focus on prevention and parenting skills but rarely on career development or employment; many professional caseworkers are overloaded with short-term "crisis-management" and have little time to work on longer term career goals or self development; many programs concentrate on teenagers with serious problems such as psychoses, drug addition, prostitution, or incest, having little time for those whose major problems are a lack of education or employment; and few programs work directly with teenage fathers.

This new approach would incorporate many lessons learned from other programs, including: graduation from high school is the essential first step toward career development and employment; programs should aggressively encourage delay of additional childbearing so the young mother can complete her education and establish employability; programs should emphasize self-responsibility and individual control and be careful not to foster dependency; programs emphasizing career development and employment should provide job placement assistance and personal support during the first year on the job; programs should actively coordinate and monitor the provision of essential services rather than settling only for referral; the program would be extended to teen fathers as well as mothers; and the teen parents entering the program would not have problems (i.e. addiction, psychoses) that would preempt efforts to help motivate, guide and sustain their energies toward their dual responsibility for self development and child development.

Finally, the program as currently conceived has several features that are unique or rarely found in other programs: it would draw upon the unpaid efforts of professional role models; those role models would work on a one-to-one basis with the teenage parents; and the program would work with each teenage mother for three years—that is, until she has completed high school and the first year of employment or college.

We are requesting professional evaluators to carefully measure how successful this program is in attaining three main goals; improving the educational and employment attainments of teen parents, empowering volunteer mentors to help achieve such results, and forming an inter-organizational program structure to solve a specific social problem.

With regard to the first goal—the success of the young parents—results should be compared with the achievements of similar teen parents who did not participate in the program. This comparison would allay fears that the program had "cream skimmed" in choosing participants—that is, that an equal percentage of similar teen parents would have found college or employment on their own.

With regard to the second goal—success in using role models—information would be gathered on the extent to which role-models derived satisfaction from their activities, on profiles of successful role-models, and on the ground rules for a successful role-modeling relationship in terms of, for example, time constraints, expectations, mutual interests, and geographic distances between the role-model and teenager.

This aspect of the program provides a chance to learn how to use volunteers to enhance other education, training, and/or employment programs. These workers represent a resource of increasing national importance given current projections that real growth in support for social service programs will not increase but rates of teen unemployment and births to teen parents will continue at record highs.

In examining attainment of the third goal—developing an inter-organizational program—evaluators would determine the crucial elements each organization gave the others. For example, many Big Sister agencies have a long waiting list of young women needing mentors: the Coalition has the volunteers these agencies need. Reciprocally, Coalition members need assistance in defining the volunteers role and what expectations and time commitments are reasonable, and a socially sanctioned way (the Big Sisters concept) of taking on these responsibilities. In addition, Planned Parenthood counselors note that high rates of unwanted second births might be dramatically reduced if the importance of family planning were consistently reinforced by a role model such as this program would provide.

The program's directors would work with a task force to develop and critique work plans for the program, its evaluation, and the dissemination of results. Members of the task force would include:

Barbara B. Blum, president, Manpower Demonstration Research Corporation; Prudence Brown, Program Officer—Urban Poverty, The Ford Foundation; Marian Wright Edelman, President, Children's Defense Fund; John W. Gardner, Chairperson, Independent Sector; and Robert J. Haggerty, M.D., President, W.T. Grant Foundation.

Beatrix A. Hamburg, M.D. Professor of Psychiatry, Mount Sinai Medical Center, Division of Child and Adolescent Psychiatry; William J. Haskins, Director, Social Services and Human Resources, National Urban League, Inc.; Ruth Mueller Hill, Former Executive Director, National Council of Negro Women; Dagmar Edith McGill, Executive Director Big Sisters of Philadelphia, Inc.; Alfred F. Moran, Executive Vice President, Planned Parenthood of New York City, Inc.; and John N. Odom, Executive Director, Big Brothers, Inc. of New York City.

ATTACHMENT A

[From the New York Times, Mar. 9, 1981]

ACHIEVERS GUIDE BLACK STUDENTS

(By Nan Robertson)

They are young black women with hope in their eyes and a burning desire to succeed. Last week 25 sophomores and juniors from Spelman College in Atlanta came to New York to learn from 50 black women achievers in law, medicine and business what it is like in the world out there.

Shepherded by their "role models" for three whirlwind days, the students visited courtrooms, hospitals and the skyscraper offices of corporations. The high point seemed to be long, informal talks in the homes of some of the achievers that inspired the visitors and gave them a hard look at reality.

Jewell Jackson McCabe, president of the Coalition of 100 Black Women, which sponsored the trip and picked the achievers, summed up one lesson the students learned in New York: "Is there a benefit in being a black female looking for a job? Absolutely no, capital letters, loudly and clearly."

However, Wilma Brady, who heads the coalition's education committee, believes that black women in the professions have gone beyond the "one black woman in the company" stage. "We are no longer tokens," she said. "I want these young women to see there are role models. But the career ladder has not been opened up to us adequately. We must continue the fight."

THAT'S DOUBLE JEOPARDY

Brustina Calhoun, a prelaw student, said: "We're hopeful, we still have a chance, but after our visit here we're no longer living in a child's fantasy. It's easy to say you want to be a lawyer, but you're black and you're female and that's double jeopardy. You've got to have your mind straight and not give up."

Charlene Leasure, another prelaw student, told how those in her field met with black women graduates of the Harvard and Howard Law Schools to discuss which route to follow. "We worry about whether we should go into an integrated or a segregated society," she said. "Harvard has the name and prestige. But some of us want to have the mental and emotional support that a black institution like Howard University offers."

Spelman, 100 years old and the oldest American college primarily for black women, has 1,250 students. Those picked for the trip did not necessarily have the highest grades but were able to articulate what they want to do, according to Barbara Brown, assistant dean for career planning.

FRANK CONVERSATIONS

One of the achievers, Cora T. Walker, a lawyer, escorted the prelaw students to the State Supreme Court so they could observe a case she and her older son were working on—"something they'd only read about in books." "I tried to show them what the game of law was all about," she said. Then she invited them to her home to continue a series of frank conversations.

Madeline Warden, who hopes to go into medicine, said the experience established a network of big-sister friendship between the New York professionals and the Spelman students. "But the road will always be rough—it will never be easy." she said.

ATTACHMENT B

[From the New York Times, July 25, 1982]

200 GIVEN SUMMER JOBS AND CHANCE AT COLLEGE

About 200 high school juniors are participating in a new program that provides inner-city students with paid summer jobs and a chance to go to college.

The program, Career Explorations 82, matches the students with supervisors who may serve as examples, providing career advice and encouragement. If the students complete the program and receive a high school diploma, they will be offered admission to Hunter College.

Students receive $97.50 a week for working Mondays through Thursdays. On Fridays, they are required to attend career education seminars at Hunter, where they discuss their job experiences and meet professionals from minority groups.

At a news conference last week at Roosevelt House, at 47 East 65th Street, the program's sponsors emphasized that the experience would prod the students to think about their futures and introduce them to professionals who could advise them.

FUND PROVIDES $199,460

"In this project there is an opportunity to help youngsters understand the direct link between their aspirations to work and how to get there," said Margaret Mahoney, the president of the Commonwealth Fund, which provided a grant of $199,460 for the program. "It will give them a stake in their future and a stake in New York City."

The program, which began July 12, was also awarded a $5,000 grant from the New York Community Trust.

Many of the students were placed in clerical jobs in corporations, small law firms, hospitals and minority-owned businesses, said Bernice Powell, president of the New York Coalition of 100 Black Women, one of the sponsors of the program.

Carcer Expectations '82 grew out of a model program sponsored by the coalition that brought black women from Spelman College in Atlanta to New York to work for a week with minority professionals in their area of interest; according to Jewell Jackson McCabe, president of the national organization. The New York City Board of Education, the Mayor's office, a consortium of business corporations and community groups also helped to organize the program.

LEARNING THE "BUSINESS LIFE"

Oral A. Jordan, a 16-year-old from Taft High School in the Bronx, is working this summer as a receptionist for TV Channel 13. Although he normally answers telephones and checks security passes, he said that he was also able to learn about sound engineering and the demands of working in New York.

"I'm learning the way business life really is," He said. "When I do finally get out into the real world, I'll know about running around in packed trains in rush hour and what kind of responsibilities I'll have to deal with."

The students were selected from four inner-city high schools on the basis of attendance records, punctuality and hard work. Donna E. Shalala, president of Hunter College, also a sponsor of the program, said that high school principals did not necessarily select students with the highest grades, but those they felt would gain most from the opportunity of work.

She added that she hoped the program would serve as a model for others around the country.

[From the New York Daily News, Aug. 12, 1982]

FOR 200 STUDENTS, A TASTE OF REAL LIFE

(By Bruce Chadwick)

Two hundred high school students who thought that all Consolidated Edison workers read meters and that Channel 13 staffers raise money on telephones are getting a quick, but rewarding, education this summer.

They are part of a new citywide program sponsored by the Coalition of 100 Black Women to get white-collar jobs in large corporations for teens from various ethnic groups as a way of getting them to pursue higher education and, in the future, high-paying jobs.

The six-week summer program, which ends Aug. 20, is administered by Hunter College. The students—from Julia Richman High on the upper East Side, Taft High in the Bronx, Prospect Heights in Brooklyn and Andrew Jackson high schools in Queens—work four days a week at corporations and spend the fifth day discussing their work experiences at Hunter seminars.

They each earn $97.50 a week, but get their salaries from a $199,000 grant from the Commonwealth Fund. It costs the corporations nothing and gets the kids interested in getting good jobs and chasing the college degree those jobs require.

"The program has been a great success," said Deborah Robinson, a Hunter counselor who assists Rebecca Powell in running the program. "At the start, 50% of the kids said they were interested in college. Now, 90% are saying they want college. They key is to get them inside these big companies and let them see firsthand how interesting work can be. * * *

Corporate executives say the program is working much better than expected. In fact, several students have already been offered summer jobs next year and a handful have been called in by their bosses and told that, when they get out of college, they have guaranteed, well-paying, full-time jobs waiting for them.

Hunter College admissions executive Robert Nicholas said the program has two goals—to show teens the inner workings of corporations and to get them interested in higher education.

"We're hopeful that many of them will realize that college is the road to the better jobs in the companies they're now working. We're hopeful many will come to Hunter, but we'd like them to go on to any college. This kind of program benefits the companies, too, because it shows them that today's teenager can be a useful, imaginative and productive worker."

Hunter College hosts a seminar once a week where the kids can talk to each other about their experiences. "They find the others are going thorugh the same things they are. They see at work that their co-workers all encounter similar situations. I think it changes them from 16-year-olds who saw themselves as outsiders to young adults who realize they can be part of the working world," said Nicholas.

[EDITOR'S NOTE.—Portions of the above article were illegible in the copy supplied to the printer.]

[From the New York Post, July 21, 1982]

200 HS KIDS TRAIN WITH THE EXPERTS

(By Jeff Wells)

Two hundred eager youngsters have been thrown into the professional workforce of the city to learn—as the song says—that if they can make it there they can make it anywhere.

The program is a unique co-operative effort between City University's Hunter College, the Board of Education, major corporations, successful businessmen, the Mayor's office, and community groups headed by the Coalition of 100 Black Women.

Called Career Explorations '82, it is supported by grants of $200,000 from the Commonwealth Fund and $5,000 from the New York Community Trust.

The students chosen have all just completed their junior years at four low-income area high schools chosen by Schools Chancellor Frank Macchiarola—Julia Richman in Manhattan, Taft in the Bronx, Prospect Heights in Brooklyn, and Andrew Jackson in Queens.

Basically it is a four-days-a-week $97.50 internship in corporate offices, law firms hospitals, tv stations, and even an antique shop.

The fifth day will be spent at Hunter College learning career planning.

[From the New York Amsterdam News, July 24, 1982]

Pilot Program To Help Educate City Youths

A new model program for inner-city teenager providing work, education, and chance to go to college was announced last Tuesday.

For some 200 participating youngsters from four New York City high schools, the program offers paid internships with successful business and professional people; career planning and training for success in the world of work; and, for those completing the program and obtaining a high school diploma, admission to Hunter College.

It grows out of a unique cooperative effort between Hunter College of the City University of New York, the New York City Board of Education, a consortium of major business corporations, several minority leadership and community groups headed by the Coalition of 100 Black Women, and the Mayor's Office.

The young men and women participating this summer have just completed their junior year at one of the four selected public high schools: Julia Richman in Manhattan, Taft in the Bronx, Prospect Heights in Brooklyn and Andrew Jackson in Queens.

They will be working in paid positions with businesses and firms throughout the city and attending weekly seminars providing career education and other skills at Hunter College's mid-Manhattan campus.

The program is supported by a grant of $199,460 from the Commonwealth Fund, as well as a $5,000 grant from a special fund for youth administered by the New York Community Trust.

Participants in the briefing and principals in the program, which is 'entitled "Career Explorations '82" include Hon. Ronald Gault, Commissioner of Employment for the City of New York; Margaret Mahoney, president of the Commonwealth Fund; Jewell Jackson McCabe, president of the New York Coalition of 100 Black Women; Bernice Powell, president of the New York Coalition of 100 Black Women; who will be codirecting the project with Hunter College staff; George Seegers, vice-president of Citibank, representing the New York City Partnership, an association of major New York City-based corporations headed by David Rockefeller, and Donna E. Shalala, president of Hunter College.

Statement of Raul Yzaguirre, President, and Martha M. Escutia, Legislative Director, National Council of La Raza, Washington, D.C.

Effective Philanthropy of Foundations

I. INTRODUCTION

The National Council of La Raza (NCLR) would like to express its appreciation for the opportunity to submit this written testimony for the official record pursuant to Oversight hearings on private foundations. The Congressional leadership should be commended for their recognition of the need to remove tax restrictions on foundations.

The ability of foundations to tackle controversial issues and to finance social action programs is one of the foremost justifications for their existence. In 1980, the nation's 22,500 private foundations provided $3.4 billion in grants to support charitable endeavors. Foundation grant money is crucial for pilot programs whose merit has not yet been assessed. Given federal budget cuts, nonprofit organizations need foundation dollars to continue providing much-needed services to the community. Furthermore, since foundations have the capacity to act as leaders in social activism, their grants to innovative programs may stimulate additional revenue from individual and corporate sources.

Though Hispanics have not been adequately served by foundations, the significance of foundation philanthropy must be recognized. In order to continue effective philanthropy, positive action must be taken both to remove tax restrictions and to sensitize foundations to the needs of the Hispanic community.

II. DISCRIMINATORY TAX TREATMENT

The tax treatment that foundations receive is discriminatory vis-a-vis the treatment that other public charities receive. The Tax Reform Act of 1969 substantially modified the charitable contribution deduction clauses in the following manner:

The upper limit on deductions for donations to public charities was increased to 50 percent of the donor's annual income, whereas deductions for gifts to foundations were limited to only 20 percent. (Internal Revenue Code, Sec. 170 (b)(1)(A)).

The full value of appreciated property given to a public charity is deductible, whereas only a part (one-half) of the value of appreciated property given to a foundation is deductible. (Internal Revenue Code, Sec. 170).

Contributions to public charities in excess of the 50 percent limit may be carried over for five years, whereas contributions to foundations in excess of the 20 percent limit cannot be carried over to future years. (Internal Revenue Code, Sec. 170 (b)(1)(A)).

The changes in the charitable contribution deduction clauses have had a chilling effect on the amount of money given to foundations and also on the establishment of new foundations. During the 1970s, only one-third as many new foundations were established as during the 1960s. With fewer foundations being born and less money being funnelled to them, foundations will be less able in the future to adequately respond to societal changes.

If the 1970s are characterized by a decline in new foundations and grant money, what is to be expected for the 1980s? This question is of crucial importance for Hispanics since the 1980s are expected to witness both Hispanic population growth and greater access to the political, economic and social arenas. The responsiveness of most foundations to the Hispanic community is minimal but inadequate foundation funding will further discourage any efforts by foundations to meet the needs of the fastest growing ethnic group in America. An equitable and favorable tax treatment would induce increased foundation creation and funding, and could benefit Hispanics in the long run. The National Council of La Raza supports legislative efforts which will encourage generous giving and place foundations at an equal tax status with other public charities.

III. FOUNDATION RESPONSIVENESS TO HISPANIC CONCERNS

Foundation dollars are tax-exempt, a benefit conferred by the public. The money channelled to foundations is lost revenue for the federal government, perhaps to the detriment of the public. It is not clear whether the federal government would carry the philanthropic burden, in the absence of foundations. Since foundation dollars may be viewed as public dollars, foundations must be strictly scrutinized for their responsiveness to the community. As an Hispanic constituency-based organization, NCLR is particularly concerned about a current lack of foundation sensitivity to the Hispanic community.

Foundations are a logical vehicle for instituting change that would benefit Hispanics. Foundations can delve into untried areas without being subject to constraints of the past, a prevalent situation in the federal budgetary process. They can actively encourage change by mobilizing resources to meet diverse conditions without being hampered by external political pressures or an internal bureaucracy. Their potential merits are many, but a major shortcoming is their less than benign neglect of Hispanic concerns. Minimal foundation dollars are currently disbursed to national and community-based Hispanic organizations.

A. Hispanic-controlled agencies as recipients of foundation grants

Hispanics constitute at least 7 percent of the U.S. population. Yet, according to a 1980 report, only 1 percent of the foundation dollars benefited Hispanics in the United States during 1977 and 1978, an increase of only 0.2 percent from five years earlier.[1]

In recent years, foundations have begun to realize the value of Hispanic control over programs funded for their benefit. The Foundation Grant Index of 1977-78 shows that 51 percent of the money benefiting Hispanics went to Hispanic-run organizations, as compared to 44 percent five years earlier.[2] Yet this represents only 177 of the total 29,672 grants recorded for 1977-78, less than one percent of the total grants awarded.[3] Furthermore, Hispanic-controlled agencies do not receive adequate foundation allocations. Grants to Hispanic-controlled agencies in 1977-78 were for a lower average dollar amount than grants to non-Hispanic institutions running Hispanic-focused programs. The following statistics reflect foundation neglect of Hispanic-controlled agencies:

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[1] Responsiveness of U.S. Foundations to Hispanic Needs and Concerns, Latino Institute, Monograph Series 5, 1980.

[2] Ibid.

[3] Ibid.

(1) The Foundation Grant Index of 1977–78 indicates that out of $16 million foundation dollars of direct benefit to Hispanics, $4.7 million (30 percent) were allocated to the field of education.[4] This area includes grants to support educational leadership, language instruction and remedial education. However, out of that $4.7 million allocation, only $470,730 were disbursed to Hispanic-controlled agencies.[5] In contrast, $4.2 million were disbursed to non-Hispanic-controlled organizations.[6]

(2) Research by Hispanics about Hispanics is a major need. Yet, it has not received adequate attention from foundations. During 1977–78, grants for research activities of direct relevance to Hispanics totalled only $2 million,[7] and Hispanic-controlled agencies received only a little over $500,000 for these activities.[8]

(3) Participation by Hispanics in economic and business enterprise development is at a level substantially below that of society as a whole. Community development projects of benefit to Hispanics received $1.7 million in grants during 1977–78.[9] Of this amount, $770,000 was disbursed to Hispanic-controlled agencies, while $976,000 was disbursed to non-Hispanic-controlled entitites.[10]

Foundations should increase investments in institutions that are formed and controlled by Hispanics. These agencies not only address the concerns of their community but also develop the leadership skills needed for equal access to political and economic arenas. Foundation resources can best be utilized by helping Hispanics help themselves.

B. Hispanics on foundation boards and staff

One major factor limiting foundation responsiveness to Hispanic needs is the lack of Hispanics serving as foundation board members and staff. According to the Council on Foundations, out of some 150,000 foundation trustees, only approximately 18 are Hispanic.[11] That is about one one-hundredths of 1 percent. The number would have to increase 700 times for representation to be proportionate to Hispanics in the population. Only about 20 out of some 22,500 private foundations (.05 percent) employ Hispanic staff.[12]

Foundation policy-making is achieved under a collegial atmosphere by board members who are predominantly white males, educated in Ivy League schools, with strong ties to the Eastern establishment. If foundation dollars, by virtue of their tax-exempt status, are viewed as public dollars, it follows that foundation boards, in order to meet the needs of the public, should be representative of the public. That means having boards which reflect a cross-section of American society—Whites, Blacks, Hispanics, Asians, other ethnic groups and women. Changing societal forces result in different demands. Continued foundation board isolation will only yield myopic and outdated policies which do not adequately meet the needs of Hispanics or other special populations. Foundation boards must actively seek the challenge and creativity of diverse ideas which stem from different experiences.

C. Foundation accountability to the Hispanic community

Foundations must be encouraged to increase their visibility and accessibility to Hispanic organizations. This may be achieved partially through the annual report, the foundation's vehicle for disseminating information.

Annual reports should be comprehensive and informative about the goals, current projects, and capacities of foundations. Equally important, annual reports should include a breakdown of grants to specific minority/ethnic groups. Such information can help minority groups in identifying foundations particularly supportive of their programs, thus bringing an element of efficiency into the process. Likewise, this information can serve as a measure of the foundation's efforts at serving the Hispanic community and other special subgroups.

Minority organizations that are not established and lack a track record usually are seldom skilled in the technicalities of proposal writing. Foundations must exert good-faith efforts which go beyond the granting of money. Providing clear written guidelines and technical assistance to embryonic organizations in preparing foundation proposals will help assure their continued existence, enable foundations to assist promising young groups, and aid foundations in their community relations.

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[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Hispanics and Grantmakers, Special Report of Foundation News, Council on Foundations, Inc., Washington, DC, 1981.
[12] Ibid.

III. CONCLUSION

In conclusion, the National Council of La Raza strongly urges the Congress to remedy the inequitable tax treatment that foundations receive by passing H.R. 3043. The present tax laws have had a chilling effect on gifts to foundations, much to the detriment of donee groups, including the Hispanic community. With less resources available, foundations are forced to decrease their grant awards, thus thwarting the growth of nonprofit organizations. Passage of H.R. 3043 will induce lifetime giving to foundations, and result in additional sources of revenue and establishment of new foundations.

With the passage of H.R. 3043, however, comes the responsiblity of assuring foundation sensitivity to the interests of minority populations such as the Hispanic community. Statistics indicate that Hispanic organizations are not receiving an equitable share of foundation money. The National Council of La Raza strongly urges foundations to seriously re-assess their policies and their giving to Hispanic groups.

In addition to providing increased funding, foundations must actively recruit Hispanics for their Boards of Trustees and their staffs. They must increase their accountability by issuing comprehensive annual reports which include a breakdown of grants to minority groups. The National Council of La Raza hopes that foundations will quickly move towards better addressing the problems of the Hispanic community and establish a mutually beneficial association.

NATIONAL MEDICAL FELLOWSHIPS, INC.,
New York, N.Y., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing to you in regard to the upcoming Subcommittee hearing on H.R. 3043 scheduled for June 27 and 28. I understand that the immediate purpose of the hearings is to assess the current federal regulations governing foundations. Since this is the first time since 1969 that the Congress has looked carefully at foundations, no doubt the hearings will raise some basic questions about foundations—their purposes, their activities, their spending patterns, their philosophies and so on. As President of a national non-profit organization that is a recipient of major foundation grants, I would like to offer a few observations on our experience with the foundation world.

National Medical Fellowships is the only organization in the United States dedicated to increasing the number of minority physicians by providing financial assistance to economically disadvantaged minority medical students. Founded in 1946, NMF has granted more than $21 million to over 11,000 students. Since 1970, NMF grants have been awarded on the basis of financial need to Black, Mexican American, mainland Puerto Rican and American Indian students, the four groups underrepresented in the field of medical education. Most NMF awards are granted to first and second year students, and special merit awards and fellowships are given to third and fourth year minority medical students.

National Medical Fellowships has always received the overwhelming percentage of its support from private sources; foundations, corporations and individuals. Foundation grants have provided the largest single source of funds for NMF, constituting annually nearly 70 percent of our donor income throughout the 1960s and 1970s. During NMF's formative years in the late 1940s, the organization's scholarship activities were supported almost entirely by foundation grants, and in the 1950s foundation support accounted for more than 90 percent of NMF's donor income. Long-term funding from major foundations, particularly The Commonwealth Fund and the Alfred P. Sloan Foundation, enable NMF to serve a larger minority student constituency and to eventually extend its assistance to all four of the minority groups underrepresented in the field of medicine.

Over the years, NMF has been fortunate to have a number of multi-year foundation grants. These major grants which guarantee income over an extended period have helped to provide continuity to NMF's program and allowed NMF valuable time to broaden its funding base by seeking and securing additional corporate and foundation donors. These major foundations are respected leaders in the philanthropic world and by participating in our program have helped NMF to attract and to maintain new donors. Unlike many corporations, foundation directors, limited only by foundation guidelines and available funds, are not obligated to stockholders for their philanthropic activities and frequently allocate their funds for more innovative and experimental programs, particularly in the area of social services.

Although private sources cannot directly compete with the amount of money that government spends in the social services, the leverage that foundations can provide by supporting minority causes can encourage and promote positive change. A number of NMF's foundation supporters illustrate this point.

NMF was recently awarded a grant by the William T. Grant Foundation to support a mental health research fellowship program for minority medical students during the upcoming 1983-84 academic year. The Behavioral Development Research Program will give participants the opportunity to acquire the necessary skills to engage in childhood and adolescent mental health research. Twelve minority students representing eleven medical schools have been awarded fellowships totaling $46,000 to pursue rsearch interests in child behavior and development. The group of 8 women and 4 men included 10 Blacks, 1 Mexican and 1 mainland Puerto Rican.

NMF has received notice from The Commonwealth Fund of a two-year, $260,000 grant in support of a new program to encourage minority students to pursue careers in research and academic medicine. Through The Commonwealth Fund Fellowships Program, NMF will annually select 20 academically outstanding, rising fourth-year minority medical students as Commonwealth Fund Fellows. Beginning in June, 1984 (program runs through December, 1985), these students will spend 8-12 weeks working in the labs of some of the nation's leading biomedical researchers. Each student selected as a Commonwealth Fellow will receive a $5,000 fellowship.

For four consecutive years NMF has administered The Henry J. Kaiser Family Foundation Merit Awards Program. This program, funded by The Henry J. Kaiser Family Foundation of Menlo Park, California, is the only national program which recognizes the achievements of graduating minority medical students. Since 1980, 174 minority students have received a total of $623,500 in recognition of outstanding academic achievement and potential for distinguished contributions to medicine. Since 1972, The Henry J. Kaiser Family Foundation has awarded NMF over $2,000,000 for the support of our regular grants-in-aid program as well as for special merit awards.

Since the early 1970s the Robert Wood Johnson Foundation has contributed over $5,000,000 to NMF's general scholarship program for first and second year minority medical students, and have been very supportive of out third and fourth year programs which provide research opportunities and recognize the academic accomplishments of minority medical students. The Robert Wood Johnson Foundation has just developed a Minority Medical Faculty Development Program which will offer four-year, post-doctoral research fellowships to minority physicians who have demonstrated superior academic and clinical skills and who are committed to careers in academic medicine and biomedical research. By supporting NMF's general scholarship program as well as special academic and research programs for third and fourth year students, the Foundation works in partnership with NMF helping to ensure the common goal of providing the United States with minorities in the field of academic medicine and research.

Other examples of foundation support which probably would not have materialized from other sources: $100,000 endowed gift for minority medical students attending medical school in Mennesota from the Andersen and Hulings Foundations; $250,000 for 3/year support for general scholarship program from the Andrew W. Mellon Foundation; $500,000 in 1974 from the Alfred P. Sloan Foundation for improved management and operations and fund-raising, established office of President and new fund-raising position (Sloan had contributed nearly $4,000,000 to NMF since 1970).

Currently, Federal legislation has substantially curtailed scholarship, grant and loan funds available to medical students and eliminated federal subisidies to the nation's medical schools. The budget no longer contains substantive financial assistance for minority- and low-income students who gain acceptance to medical schools. In addition, minority enrollment should be increased in U.S. medical schools in proportion to the expected future representation of each minority group in the general population. A broad national consensus must be developed to achieve this goal and the federal government should take the lead in organizing and financing this program.

The high cost of medical education is already a major factor discouraging qualified minority students from becoming physicians. Since the 1974-75 academic year, medical school tuition has risen 196 percent at private schools and 125 percent at public schools. Living expenses and educational costs at some institutions range up to $20,000 per year. For the just completed 1982-83 academic year, a number of medical schools established an annual tuition schedule of $20,000 with one state school charging $26,000 for out-of-state students.

Without equitable financial assistance, more minority students will be forced to forego a medical education. Grants from National Medical Fellowships have proved to be a vital and necessary part of the total financial aid package for many minority medical students. Thanks to our donors, NMF is able to provide flexibility and equity to low and moderate income minority students who are unable to rely upon family resources. Throughout NMF's history, national and regional foundations in the United States have constituted the major portion of our donor income through large multi-year grants, endowed gifts, and smaller annual contributions, and have enabled NMF to have a significant financial impact on assisting minority students in their pursuit of medical careers.

We appreciate you time in reviewing the information in this letter outlining how foundation support has been and continues to be an important factor in the successful operation of NMF's program activities. We hope that the information will be of help to you in the upcoming subcommittee hearing and will present additional, documented arguments in favor of HR 3043. We also request that this letter be made an offical part of the hearings record. If you have any questions, pleade do not hesitiate to contact me.

Sincerely yours,

LEON JOHNSON, Jr., *President.*

U.S. FOUNDATIONS RESPONSIVENESS TO PUERTO RICAN NEEDS AND CONCERNS

FOUNDATION GIVING TO PUERTO RICAN ORGANIZATIONS 1979 - 1981

Prepared by:

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August 31, 1982

FORWARD

To further its program in Public Policy Analysis and Research, the National Puerto Rican Coalition commissioned the following study on foundation giving to Puerto Rican organizations over a three year period, 1979-81. It should be noted that due to cost limitations, the basic source of information was the Foundation Grants Index for the period. The Foundation Grants Index however provides the most complete source of information on grants of $5,000 or over awarded by major foundations. For example, the 1981 Index covered grants of 369 foundations and included grants made by the 100 largest foundations. The grants reported in the Index represents 50% of all grants awarded by all foundations. It should be noted that many corporate foundations award grants of less than $5,000 and so are not covered in this report. However, in our judgement this report fairly represents the present state of foundation giving by the larger foundations.

One of the general findings of the report is that in the period covered, grants made to Puerto Rican organizations represented 0.2% of the total grants made. The report further suggests "under an assumption of equitable treatment, Puerto Ricans would be expected to receive at least 2% (60 million) of the three billion recorded in the data source. It is thus evident that the support Puerto Ricans receive from foundations as recorded by the FGI, is at least ten times less than it should be if equitably distributed."

The National Puerto Rican Coalition has not as an organization taken a position on what constitutes equity in foundation grants. We are also cognizant that there is a need for more Puerto Rican organizations to become aware of foundation giving and to more aggressively seek support from this source. However we are convinced that foundation giving to Puerto Rican organizations can and must be significantly increased. To this end the Coalition will continue to bring to the attention of the foundation world the crisis conditions faced by our institutions. We will also continue to inform and counsel our member institutions regarding the foundation world.

The National Puerto Rican Coalition has a major commitment to work towards strengthening of our non-profit institutions. This report provides essential information by which the Coalition can begin to meet this commitment in the foundation area.

Louis Nunez
President
National Puerto Rican Coalition, Inc.

LN:tf

October, 1982

U.S. FOUNDATIONS' RESPONSIVENESS TO PUERTO RICAN NEEDS AND CONCERNS

DESCRIPTION OF STUDY

This study examines the support offered by foundations to Puerto Ricans in the United States and in the Commonwealth of Puerto Rico as recorded in the Foundation Grants Index (FGI) of 1979, 1980 and Foundation Grants Index's Eleventh Edition (1981). Support by foundations to Puerto Ricans was examined by looking at:

- foundations acting as donors for Puerto Rican concerns,
- Puerto Rican agencies designated as donees,
- level of Puerto Rican control in recipients' board of directors,
- geographic distribution of grants, and
- fields of interest in which grants were given.

Selection and Analysis of Grants

Due to previous experiences in which we identified a considerable margin of error in how the Foundation Center codes Hispanic grants for inclusion in its Indexes,[1] a manual search was conducted on 63,399 grants listed in the three FGI volumes previously mentioned. We extracted all grants identified as awarded to : (1) Puerto Rican agencies, (2) to Anglo agencies for projects earmarked to benefit Puerto Ricans, (3) to agencies that, although not described as Puerto Rican, were likely to be so. The latter were further investigated through phone calls to determine if, in fact, they could be counted as Puerto Rican.

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[1] See Chapter II, "Methodological Concerns" (pp. 24-37), Responsiveness of U.S. Foundations to Hispanic Needs and Concerns (Technical Report) submitted to the National Institute of Education, Minorities and Women Program, under Grant NIE-G-79-0068, Latino Institute Research Division, Reston, VA, June, 1980.

Grants were extracted in printed index cards as shown in Appendix A. Cards were then xeroxed in sets of different colors for a preliminary analysis, as follows:

1. Green cards - Alphabetically arranged by recipients
2. Yellow cards - Alphabetically arranged by foundations
3. White cards - roughly arranged by purpose of grant

FINDINGS

General Findings

We identified only 171 grants of direct benefit to Puerto Ricans. These were given by 65 foundations for a total value of $7,002,386. The number of grants awarded for the benefit of Puerto Ricans represents 0.2% of the total number recorded in our data source. Likewise, because the total dollar amount recorded in the FGI's exceeds $3 billion, the amount awarded to Puerto Ricans represents less than 0.2% of the total.

The Puerto Rican population in the U.S. and Puerto Rico (approximately 5,000,000) represents 2% of the total population of this country. Under an assumption of equitable treatment, Puerto Ricans would be expected to receive at least 2% ($60 million) of the $3 billion recorded in our data source. *It is thus evident that the support Puerto Ricans receive from foundations as recorded by the FGI is, at best, ten times less than it should be if equitably distributed.*

The average grant awarded to Puerto Ricans was $40,949; slightly higher than the corresponding figure reported in the study previously cited ($35,024). Also, the number of grants recorded in the annual FGI would seem to have increased: for the volumes of 1977-1978 we identified 62 grants, an average of 31 per volume, while in this study the average per volume was 57 grants.

In terms of dollar amounts, the 1977-78 study recorded a total of $2,462,876 awarded for Puerto Ricans, an average of $1,231,438 per year. In this study, the annual average increased to $2,334,128.

Table 1 summarizes the general findings of this study and compares them with those reported in the Latino Institute study conducted in 1980.

Table 1

Findings from the Latino Institute Study (1980)
and the More Recent Grants Examined (1982) on
Foundation Support for Puerto Ricans, 1977-1981

Category	Latino Institute (Total for Two Years) (1977-1978)	National Puerto Rican Coalition (Total for Three Years) (1979-1981)
1. Total Number of Grants directly benefitting Puerto Ricans	62	171
2. Total Number of Grants	29,672	53,399
3. Grants benefitting Puerto Ricans as percentage of all grants	0.2%	0.2%
4. Number of Foundations Supporting Puerto Ricans	n/a	65
5. Total Dollar Value of Grants awarded to Puerto Ricans	$2,462,876	$7,002,386
6. Total Dollar Value of all Grants Recorded by our Data Source (FGI)	$1,591,781,291	$ 3 billion +
7. Total Dollar Value of Grants Awarded to Puerto Ricans as Percent of Total Dollar Value of all grants	0.1%	0.2%
8. Average Grant ($) for the Benefit of Puerto Ricans	$35,024	$40,949
9. Average Grant for All Other Population Groups	$53,483	$47,319

Puerto Rican Control in Agencies Acting as Donees

Fifty (50) agencies received funds in support of Puerto Rican needs and concerns. Of these, 40 (80%) are Puerto Rican controlled. The ten non-Puerto Rican controlled agencies received a total dollar amount of $235,988 (3% of all awarded monies). Thus, foundations choosing to support Puerto Rican concerns are primarily investing their monies in Puerto Rican controlled agencies.

Individual Foundations Supporting Puerto Ricans and Number of Grants Awarded

As evidenced in Appendix B, only 65 foundations are recorded as supporting Puerto Rican needs and concerns during the study period. Figure 1 (Appendix E) presents the frequency of support given by individual foundations to Puerto Ricans, according to the number of grants awarded. A considerable majority of foundations (71%) awarded only one or two grants during the three-year period. This indicates little commitment to continued support and could be a measure of tokenism.

Foundations Awarding the Largest Total Dollar Amounts in Support of Hispanics

As expected, among foundations supporting Puerto Rican needs and concerns, The Ford Foundation awarded the largest numbers of grants, representing the largest amount of monies: it accounts for 27 grants (16%) and a total dollar amount of $2,036,104 (29% of all monies received by and for Puerto Ricans). Table 2 presents information on five foundations which awarded the largest amount of monies for Puerto Rican concerns.

Table 2

Foundations Giving the Largest Funds
by Dollar Amount and Number of Grants Awarded

Name of Foundation	Total Amount Awarded (%)	Number of Grants Awarded (%)
Ford Foundation	$2,036,104 (44%)	27 (64%)
Rockefeller Foundation	1,216,252 (26%)	6 (14%)
Clark (Edna McConnell) Foundation	549,220 (12%)	6 (14%)
Carnegie Corporation of New York	446,000 (9%)	2 (5%)
Johnson (Robert Wood) Foundation	365,203 (9%)	1 (2%)
TOTALS	4,612,779 (100%)	42 (99%)

The five foundations presented in Table 2 account for 66% of all monies identified in the FGI as benefitting Puerto Ricans, but only one-fourth of the number of grants identified. Each of the remaining sixty foundations awarded total amounts under $200,000 during the three-year period. Seven foundations awarded amounts ranging between $115,000 and $188,841. Each of the remaining fifty-three foundations (81%) gave less than a total of $100,000 in support of Puerto Ricans (see Appendix B for details).

Agencies Receiving the Largest Total Dollar Amounts in Support of Puerto Rican Concerns

Table 3 presents the 14 agencies which received the largest amount of monies awarded by foundations to benefit Puerto Ricans. The Puerto Rican Legal Defense and Education Fund, and Aspira of America received the largest amount of monies donated by all foundations for Puerto Ricans (41%).

Table 3

Agencies Receiving the Largest Amount of Funds,
by Dollar Amount and Number of Grants Awarded

Name of Agency (State)	Amount Received (%)	Number of Grants (%)
Puerto Rican Legal Defense and Education Fund (NY)	$1,602,892 (27%)	22 (20%)
Aspira of America (NY)	1,296,773 (22%)	19 (18%)
CUNY/Center for Puerto Rican Studies (NY)	564,967 (9%)	3 (3%)
Boricua College (NY)	344,894 (6%)	6 (6%)
Puerto Rican Migration Research Consortium (NY)	310,000 (5%)	1 (.09%)
Latino Project (PA)	308,704 (5%)	4 (4%)
Puerto Rican Traveling Theatre (NY)	277,500 (5%)	7 (7%)
Aspira (New Jersey)	255,300 (4%)	13 (12%)
University of Puerto Rico (PR)	218,916 (4%)	4 (4%)
La Casa de Puerto Rico (CT)	213,841 (4%)	3 (3%)
Centro de Estudios de la Realidad Puertorriqueña (PR)	165,595 (3%)	2 (2%)
La Casa de Don Pedro (NJ)	153,000 (2%)	9 (8%)
Inquilinos Boricuas (MA)	117,000 (2%)	8 (7%)
Taller Puertorriqueño (PA)	103,331 (2%)	5 (4%)
TOTALS	$5,932,713 (100%)	107 (98.09%)

These agencies combined, received 85% of all monies awarded for Puerto Rican concerns and 63% of the total number of grants made on behalf of our population.

Because these agencies represent only 28% of all agencies which received grants, the data suggest a lack of diversification in the way foundations support Puerto Rican agencies. Expressed in other words, either foundations seem to prefer a certain type of agency, or only a certain type of agency is able to obtain significant support from U.S. foundations. Also, note that the five agencies located at the top of the list are located in New York City. Appendix C offers a list of agencies receiving support for Puerto Rican concerns, including dollar amounts and number of grants received.

Geographic Distribution of Grants

A considerable majority of all grants and monies awarded for Puerto Ricans went to the Northeastern region of the U.S.

Table 4 presents states which received foundation support for Puerto Ricans, as well as the total amount of monies and number of grants received.

Table 4
Countries and States, in Order of Monetary Allocation, by Dollar Amounts and Number of Grants Received for Puerto Rican Concerns

State	Amount Received	Number of Grants (%)
New York	$4,524,344 (64%)	78 (46%)
Commonwealth of [1] Puerto Rico	670,086 (10%)	25 (15%)
Pennsylvania	480,035 (7%)	14 (8%)
New Jersey	475,800 (6%)	26 (15%)
Massachusetts	334,630 (5%)	18 (11%)
District of Columbia	270,000 (4%)	3 (2%)
Connecticut	218,841 (3%)	4 (2%)
England*	18,650 (0.3%)	1 (0.6%)
Illinois	10,000 (0.1%)	2 (1%)
Total	7,002,386 (94.4%)	171 (100%)

*A grant by the Ford Foundation to the Minority Rights Group in London for a bilingual report on Puerto Rican emigration.

[1] Please refer to Appendix D.

Purpose of Grants and Areas of Interest

More grants were awarded for education than for other fields of interest (Table 5). The areas of advocacy/legal services and research also received a high amount of monies. Although these three areas received 80% of all funds, they only received 61% of the grants awarded for Puerto Rican concerns. Research received the highest average size of award ($66,119), while welfare received the lowest grant size on average ($16,073).

Table 5

Purpose of Grants by
Dollar Amount and Number of Grants

Purposes	Amount	# of Grants
Education	$1,970,601 (28%)	61 (36%)
Advocacy & legal services	1,903,352 (27%)	26 (14%)
Research	1,719,118 (24%)	18 (11%)
Media and the arts	627,989 (9%)	24 (14%)
Community Development	392,566 (6%)	20 (12%)
Health	148,525 (2%)	6 (4%)
Welfare	144,660 (2%)	9 (5%)
United Funds	25,165 (0.3%)	4 (2%)
Totals	$7,002,386 (99.3%)	171 (100%)

APPENDICES

APPENDIX A

Donee: ____________________________________

Location: ______________________

Donor: ____________________________________

Location: ______________________

Purpose of Grant:

____

____

____

____

Comments:

____

____

____

Grant Amount: ______________

FGI ID. ______ ______
(yr.) (#)

Purpose Category:

____

Geographical category:

____

APPENDIX B

List of Foundations Which Supported Puerto Rican Needs and Concerns as Recorded by the FGI, 1979-81

Name of Foundation	$ Amount Given	# of Grants
1. Amoco Foundation (IL)	$5,000	1
2. Atlantic Richfield Foundation (CA)	15,000	3
3. Booth Ferris Foundation (NY)	60,000	2
4. Cabot Corporation Foundation (MA)	5,000	1
5. Cabot Family Charitable Trust (MA)	5,000	1
6. Carnegie Corporation of NY (NY)	446,000	2
7. Clark (Edna McConnell) Foundation (NY)	549,220	6
8. Clark (Robert Sterling) Foundation (NY	36,960	3
9. Continental Corporation Foundation (NY)	11,165	2
10. DeRance, Inc. (WI)	45,410	3
11. Dodge (Geraldine R.) Foundation (NJ)	45,000	2
12. Exxon Educational Foundation (NY)	26,250	1
13. Fels (Samuel S.) Fund (PA)	19,250	2
14. Field Foundation (NY)	15,000	1
15. Ford (Edward E.) Foundation (NY)	30,000	1
16. Ford Foundation	2,036,104	27
17. Ford Motor Company Fund (MI)	10,000	1
18. Fund for New Jersey (NJ)	17,500	1
19. General Motors Foundation (MI)	15,000	3
20. Grant (William T.) Foundation (NY)	76,300	1
21. Gulf Oil Foundation of Delaware (PA)	14,000	2
22. Hartford Foundation for Public Giving (Conn.)	188,841	2
23. Hayden (Charles) Foundation (NY	85,500	6
24. Hazen (Edward W.) Foundation (CT)	21,000	1
25. Hearst (William Randolph) Foundation (NY)	20,000	2
26. Howard & Bush Foundation (CT)	5,000	1
27. Hyams (Godfrey M.) Trust (MA)	32,000	4

APPENDIX B Continued

Name of Foundation	$ Amount Given	# of Grants
28. Jerome Foundation (MN)	57,500	1
29. Johnson (Robert Wood) Foundation (NJ)	365,203	1
30. Kaplan (JM) Fund (NY)	15,000	1
31. Kresge Foundation (MI)	125,000	2
32. Lilly Endowment (IN)	30,000 (P.R. only)	1
33. Merck Company Foundation (NJ)	22,400	3
34. Merrill (Charles E.) Trust (NY)	30,000 (P.R. only)	2
35. Metropolitan Life Foundation (NY)	5,000	1
36. Milbank Memorial Fund (NY)	19,500 (P.R)	1
37. Mobil Foundation (NY)	27,500	1
38. Morgan Guarantee Trust Co. (NY)	13,500	2
39. Mott (Charles S.) Foundation (MI)	15,000	1
40. Nalco Foundation (IL)	5,000	1
41. Needmor Fund (OH)	20,000	1
42. New World Foundation (NY)	85,000	3
43. NY Community Trust (NY)	115,200	5
44. New York Foundation (NY)	74,300	2
45. Penn (William) Foundation (PA)	95,000	2
46. Permanent Charity Foundation of Boston (MA)	60,000	3
47. Pew Memorial Trust (PA)	37,000	2
48. Philadelphia Foundation (PA)	31,831	5
49. Prudential Foundation (NJ)	16,000	2
50. Public Welfare Foundation (DC)	15,000	1
51. Research Corporation (NY)	8,700	1
52. Revson (Charles H.) Foundation (NY)	150,000	1
53. Rockefeller Brothers Fund (NY)	175,000	4
54. Rockefeller Foundation (NY)	1,216,252	6
55. Rubinstein (Helena) Foundation (NY)	10,000	2
56. Scherman Foundation (NY)	20,000	2
57. Schumann (Florence & John) Foundation (NY)	118,000	8
58. Shubert Foundation (NY)	10,000	2
59. Surdna Foundation (NY)	20,000	1
60. Tinker Foundation (NY)	24,000	2

APPENDIX B Continued

Name of Foundation	$ Amount Given	# of Grants
61. Turell Fund (NJ)	$30,000	2
62. U.S. Steel Foundation (PA)	30,000	1
63. Victoria Foundation (NJ)	115,000	6
64. Western Electric Fund (NY)	5,000	1
65. Xerox Foundation (CT)	5,000	1
Total	7,002,386	171

APPENDIX C

Appendix C - Agencies Which Received Foundation Support for Puerto Rican Needs and Concerns

Name of Agency	$ Amount Received	# of Grants
1. Acción Puertorriqueña de Filadelfia	$13,000	2
2. American Academy of Arts and Sciences	40,000	1
3. *Archidiocese of San Juan	5,000	1
4. Aspira of America	1,297,103	19
5. Aspira of Illinois	10,000	2
6. Aspira of New Jersey	255,300	13
7. Aspira of Pennsylvania	55,000	3
8. Aspira of New York	24,000	1
9. Betances Health Unit	70,000	4
10. *Barceloneta Municipal Hospital	5,000	1
11. Boricua College	344,894	5
12. Catholic University of Puerto Rico	45,410	2
13. Casa Myrna Vázquez	20,000	2
14. *CEREP	165,595	2
15. CUNY/Center for Puerto Rican Studies	564,967	3
16. *Colegio San Ignacio	15,000	1
17. Coordinating Council for Foundations	5,000	1
18. *Diocese of Ponce	10,000	1
19. *Dispensario San Antonio	60,000	2
20. *El Nuevo Teatro Pobre de América	10,000	1
21. *Evangelical Seminary of Puerto Rico	10,000	1

* Denotes agencies located in the Commonwealth of Puerto Rico

APPENDIX C Continued

Name of Agency	$ Amount Received	# of Grants
22. Hispanic Office of Planning and Evaluation	$42,000	3
23. Inquilinosboricuas en Accion	117,000	8
24. *Junior Achievement of Puerto Rico	10,000	1
25. Junior League of the City of New York	11,200	1
26. La Casa de Don Pedro	153,000	9
27. La Casa de Puerto Rico	213,841	3
28. Latino Project	308,704	4
29. *Medical School of Ponce	10,000	1
30. Minority Rights Group (London)	18,650	1
31. Museo del Barrio	38,000	5
32. National Puerto Rican Forum	22,500	3
33. New York Council for the Humanities	10,508	1
34. Puerto Rican Association for Community Affairs	65,690	4
35. Puerto Rican Family Institute	50,000	2
36. Puerto Rican Legal Committee	67,500	4
37. Puerto Rican Legal Defense and Education Fund	1,602,712	22
38. Puerto Rican Migration Research Consortium	310,000	1
39. Puerto Rican Traveling Theatre	277,500	7
40. Regis College for Women	10,000	2
41. Robert F. Kennedy Memorial	15,000	1
42. Sex Information and Education Council of the U.S.	20,000	1
43. *St. John's School	30,000	1
44. Taller Puertorriqueño	103,331	5
45. *United Fund of Puerto Rico	20,125	3
46. *United Fund of San Juan	5,040	1
47. University of Massachusetts	105,630	2
48. *University of Puerto Rico	218,916	5
49. *University of the Sacred Heart	50,000	1
Total	7,002,386	171

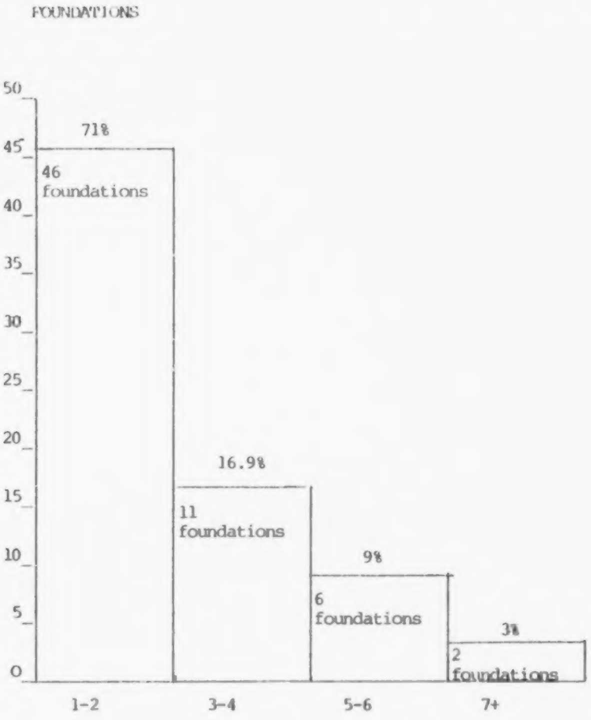
* Denotes agencies located in the Commonwealth of Puerto Rico

APPENDIX D

Grants in the Commonwealth of Puerto Rico

Donee	Amount Received	Number of Grants	Donors
Archidiocese of San Juan	$ 5,000	1	De Rance, Inc.
Barceloneta Municipal Hospital	5,000	1	Merck Company Foundation
Catholic University of Puerto Rico	45,410	2	De Rance, Inc. and Merrill (Charles E.) Trust
CEREP (Centro de Estudios de la Realidad Puertorriquena)	165,595	2	Ford Foundation
Colegio San Ignacio	15,000	1	Merrill (Charles E.) Trust
Diocese of Ponce	10,000	1	De Rance, Inc.
Dispensario San Antonio	60,000	2	Ford Foundation
El Nuevo Teatro Pobre de América	10,000	1	Ford Foundation
Evangelical Seminary of Puerto Rico	10,000	1	Lilly Endowment, Inc.
Junior Achievement of Puerto Rico	10,000	1	Hearst (William Randolph) Foundation
Medical School of Ponce	10,000	1	Merck Company Foundation
St. John's School	30,000	1	Ford (Edward E.) Foundation
United Fund of Puerto Rico	20,125	3	Gulf Oil Foundation of Delaware; Continental Corporation
United Fund of San Juan	5,040	1	Continental Corporation
University of Puerto Rico	218,916	5	Clark (Edna McConnell) Foundation; Research Corporation; Milbank Memorial Fund; Merck Company Foundation; Exxon Education Foundation
University of the Sacred Heart	50,000	1	Kresge Foundation
TOTALS	$670,086	25	

APPENDIX E



Number of grants to benefit Puerto Ricans

Figure I - Frequency of Individual Foundations Supporting Puerto Rican Needs and Concerns According to Number of Grants 1979-1981

Table 1 - A Comparisson of Findings by the Latino Institute (1980) and the National Puerto Rican Coalition (1982) on Foundation Support for Puerto Ricans, 1977-1981

		L.I. (1977-1978)	NPRC (1979-1981)
1.	Total # of Grants for the benefit of Puerto Ricans	62	171
2.	Total # of Grants for all groups	29,672	63,399
3.	Grants to benefit Puerto Ricans as percentage of all grants	0.2	0.2
4.	Number of Foundations Supporting Puerto Ricans	N/A	65
5.	Total dollar value of grants awarded Puerto Ricans	$2,462,876	$7,002,386
6.	Total dollar value of all grants recorded by our dat source (FGI)	$1,591,781,291	$3 billion +
7.	Total dollar value of grants awarded to Puerto Ricans as percent of total dollar value of all grants	0.1	0.2
8.	Average grant for the benefit of Puerto Ricans	$35,024	$40,949
9.	Average grant for all other population groups	$53,483	$47,319

NATIONAL URBAN LEAGUE, INC.,
New York, N.Y., June 14, 1983.

Hon. CHARLES B. RANGEL,
Chairman, Oversight Subcommittee,
Rayburn House Office Building, Washington, D.C.

DEAR CHARLIE: On June 27-28 the Oversight Subcommittee of the U.S. House Committee on Ways and Means will hold hearings to review the 1969 Tax Act's affect on private foundations. I appreciated the recent opportunity to visit with Ted Jones about our views on these hearings, and the importance of private foundation grantmaking to the National Urban League.

We are particularly concerned over the negative inpact which the excess business holdings provision of the 1969 Tax Act has had on one of our major supporters: The W. K. Kellogg Foundation of Battle Creek, Michigan. This provision (Section 4943) on "excess" business holdings of private foundations limits the proportion of stock of any particular business enterprise which a private foundation, like Kellogg, may own.

This restriction has proven to be unnecessary, in our judgment, because of other provisions of tax and trust law and an unwarranted instrusion on the investment rights and responsibilities of foundation managers and trustees. For example, no other charities are so restricted in their portfolio management, and we don't believe private foundations should be either. This provision has also helped to effectively "kill" the birth of new major foundations since the 1969 Tax Act.

I'm taking the liberty of enclosing a background paper, developed by the Kellogg Foundation, on this issue.

Ultimately, of course, our concern is with the future grantmaking capability of foundations like Kellogg and with the best interests of philanthropy. The Kellogg Foundation has an outstanding record in terms of both asset growth and payout for charitable purposes. Yet it faces the prospect of forced diverstiture under the existing excess business holdings provisions. Such a divestiture could drastically lower funds which the Kellogg Foundation has available to support the National Urban League and other nonprofit organizations.

Your support of the Kellogg Foundation during the hearings, and relief for the Foundation from the excess business holdings provision, will be much appreciated. I would be pleased to answer any questions which you or members of your staff might have. Thanks, Charlie, for your continued leadership and efforts on behalf of the 19th District and the Nation.

With warm personal regards,

Sincerely,

JOHN E. JACOB, *President.*

Enclosure.

A REVIEW OF EXCESS BUSINESS HOLDINGS PROVISIONS (IRS SECTION 4943) AND THEIR IMPACT ON PRIVATE FOUNDATIONS

The excess business holdings provisions (Section 4943) of the 1969 Tax Act restrict the percentage amount of a single corporate stock which may be owned by a private foundation and its "disqualified persons." [1]

These provisions should be repealed by Congress for a number of reasons:

1. Fourteen years of experience have shown that the excess business holdings provisions are now unnecessary because of the provisions of tax and trust law.
2. The provisions have contributed to the dramatic decline in the creation of new foundations since 1969.
3. The excess business holdings provisions represent an unreasonable and unwarranted restriction on the investment decisions of foundation trustees and managers.
4. The provisions threaten the future grantmaking capacity and the value of assets of a number of foundations nationwide, including the W. K. Kellogg Foundation.

I. EXCESS BUSINESS HOLDINGS PROBLEMS BEFORE TRA69

In 1965, the U.S. Department of Treasury reported that a number of foundations (109 of 1,300 private foundations surveyed) owned 20 percent or more of a business enterprise. The Treasury Report provided examples of how, in a limited number of cases, such ownership had resulted in related abuses by foundations. It expressed anxiety over the potential for further abuses of three general types. They were: competitive advantage, distribution of earnings, and management of business enterprise.

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[1] "Disqualified persons" are essentially the founder, foundation managers, and their lineal descendants.

Competitive advantage

Treasury noted that a few business owners had manipulated the purpose of a foundation by using tax-free dollars to further business activities in ways considered unfair to competitors. Corporate taxes were avoided by paying pre-tax profits to a foundation (tax-exempt); using pre-tax donations to a foundation to help capitalize or expand a business or by using tax-free foundation investment income to supply capital to a business. This represented unfair competitive advantage, since businesses not owned by foundations rely on after-tax dollars for capital.

Distribution of earnings

There were examples of foundation-owned enterprises delaying distribution of profits to the parent organizations. This allowed profits to be reinvested in business modernization without tax liability; and in turn delayed benefits to charity through foundation grantmaking.

Management of business enterprise

The Treasury Report said there were instances when a foundation became involved in business activities to the point that the charitable pursuits of the foundation were "submerged" by pressures and demands of the commercial enterprise.

II. DESCRIPTION OF TRA69: EXCESS BUSINESS HOLDINGS PROVISIONS

Under Section 4943 of the 1969 Tax Act, the federal government adopted new restrictions on foundations which prohibited "excess" business holdings; with the intent of forestalling the types of foundation/business interactions of concern to the Treasury Department. Excess holdings that existed before 1969 were treated differently from those acquired afterward.

Holdings acquired after 1969

For holdings acquired after 1969, the foundation—in conjunction with all "disqualified" persons (essentially the founder, foundation managers and their lineal descendants)—may not in most instances hold more than 20 percent of the voting stock in the business enterprise. Stock owned above the permitted limits must be sold within five years.

Holdings acquired before 1969

The rules for pre-1969 holdings are relatively complex, with each foundation provided two time periods, or phases, for divestiture. The rules, as they apply to the Kellogg Foundation, are:

Phase 1: In a formula based on percent of stock ownership in 1969, a foundation must have reduced its percentage of ownership to 50 percent or less (including that owned by disqualified persons). Foundations were given from 10 years to 20 years to reach the 50 percent level.

Phase 2: The length of time for Phase 2 is 15 years for all foundations regardless of their holdings. At the end of Phase 2, the foundation must have reduced its holdings to 35 percent, or less.

III. WHY THE EXCESS BUSINESS HOLDINGS PROVISIONS ARE NOT NEEDED

By enacting Section 4943 of the 1969 Tax Act, Congress limited the amount of a single corporate stock or corporate ownership which could be held by a private foundation. However, the abuse relative to foundation ownership of stock, as cited in the 1965 Treasury Report, and in the 1969 Congressional hearings, included only a few, if well publicized, examples.[1] The 1965 Treasury Department Report emphasized that "(our) investigation had indicated that most private foundations act responsibly and contribute significantly to the improvement of society." In light of the limited number of cited abuses, Section 4943 has proven to be a heavy handed response; punishment of the many for the sins of the few.

The types of abuses with which Congress was rightfully concerned were addressed forcefully in the 1969 Tax Act not only by the Section 4943 provisions relating to excess business holdings, but also by the other sections providing a penalty tax on jeopardizing investments, setting a minimum distribution requirement for foundations, and by a myriad of other foundation requirements. All of these provisions in the 1969 Tax Act, as well as the foundation oversight under general trust law, represent a strong case for now revising what John Nason,[2] author of "Trustees and the Future of Foundations," recently labeled "the unnecessary regulations on excess business holdings."

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[1] The abuse most often cited during the 1969 hearings related to the James Irvine Foundation of San Francisco, which owned 53 percent of the Irvine Company. The Company in turn owned 88,000 acres in suburban Los Angeles. The land was allegedly valued by the Company at $1 billion. However, the Foundation carried its Irvine Company stock at a value of $2.

This revision can be made because: (1) the excess business holdings provisions as currently written are no longer required to stop abuse; (2) because the excess business holdings provisions appear to be one of the major disincentives to the creation of new foundations; (3) because the provisions represent an unreasonable restriction on the investment responsibilities and rights of foundation trustees and managers; and (4) because the provisions threaten the future grantmaking capability of foundations.

1. The provisions are not required to stop abuse.

The three primary areas of limited abuse reported by the Treasury Department in 1965 are today adequately safeguarded by other laws.

Competitive advantage

Examples of unfair competitive advantage have disappeared since the 1969 Act. Yet many foundations still have excess holdings. In short, provisions of the law—notably rules against self-dealing and jeopardy investments—have eliminated the abuses.

Distribution of earnings

The problem of some foundations making small payouts to charity has been eliminated by the congressionally mandated payout requirement for private foundations, five percent of market value of assets must be distributed annually.

Management of business enterprise

As noted earlier, problems of jeopardy investments and self dealing have been effectively eliminated by other provisions of the 1969 Tax Act. In addition, both trust law and oversight regulations of the Securities and Exchange Commission for publicly traded stock provide additional safeguards regarding fiduciary rights and responsibilities of foundation and corporate board members.

2. The provisions are a barrier to creation of new foundations.

Since 1969, many potential donors with family business interests have decided not to create foundations. There have been a number of reasons, including differential treatment of gifts to public charities as opposed to foundations, and changes in the general economy. The excess business holdings provisions have also been one of the major deterrents.

The impact of these provisions is understandable in light of the history of foundations in America. According to the 1970 Peterson Commission, the creation of foundations—and particularly America's larger ones—usually has been in the form of blocks of stock controlling a business which the donor developed during his lifetime. Data compiled by the Commission indicated that over half of all gifts to large foundations were in the form of control stock. And Section 4943 of the 1969 Tax Act has been directed precisely at discouraging the contributions of this type of asset. This impact seems to be borne out in the decline in creation of new foundations nationally since the excess business holdings provisions went into effect in 1969. In the decade from 1970–79, only 258 new large foundations were established (that is, with assets greater than $1 million or grants of more than $100,000 per year). Only two of those had assets greater than $100 million. This contrasts with the creation of 1,261 new large foundations from 1950–59, and 756 from 1960–69.

3. The provisions represent an unwarranted and unreasonable restriction on investment rights and responsibilities of foundation trustees and managers.

Only private foundations—among the nation's multitude of philanthropic organizations—are restricted as to the type of assets which they may have in their portfolios and use to generate maximum income for charitable activities. The argument is not that all foundations should have assets concentrated in a particular form of investment. For many, a diversified portfolio represents the best return for charitable purposes. For others, however, assets retained in the form of one corporate stock have proven to be outstanding sources of income for charity. Foundations trustees and managers should thus have the same right and responsibility—as do the trustees of all other charities in the United States—of making sound investment decisions based on the best intersts of charitable purposes and not based on the dictates of government. Eliminating Section 4943 of the Internal Revenue Code (excess business holdings provisions) will provide such equality of investment options to foundations.

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[2] December 7, 1982 speech before members of the Minnesota Council on Foundations.

[3] Estimate based on survey conducted by the Council on Foundations in 1980 and independent review of foundation 990s. Scope of problem is difficult to ascertain since foundations facing divestiture requirements are reluctant to be identified. Knowledge of such forced sale of assets at a future date could depress the value of their holdings.

4. The excess business holdings provisions may result in significant loss of foundation assets and grantmaking capability.

The excess business holdings rules are too complex, inflexible and difficult to work with, and they have severe, totally unanticipated consequences for existing foundations and corporations. The major pre-1969 foundations with excess business holdings still have a number of years to reach permitted divestiture levels. There likely will be increased problems, particularly with business takeovers and mergers as the foundations divest. Knowledge that a foundation must divest a major block of stock within a specified period is also likely to depress the price and aid in outside merger or takeover attempts of a related business. Divestiture under these circumstances, or because of a generally depressed economy, is difficult, expensive, and may result in significant loss of foundation assets. That translates into a loss of funds for charitable purposes.

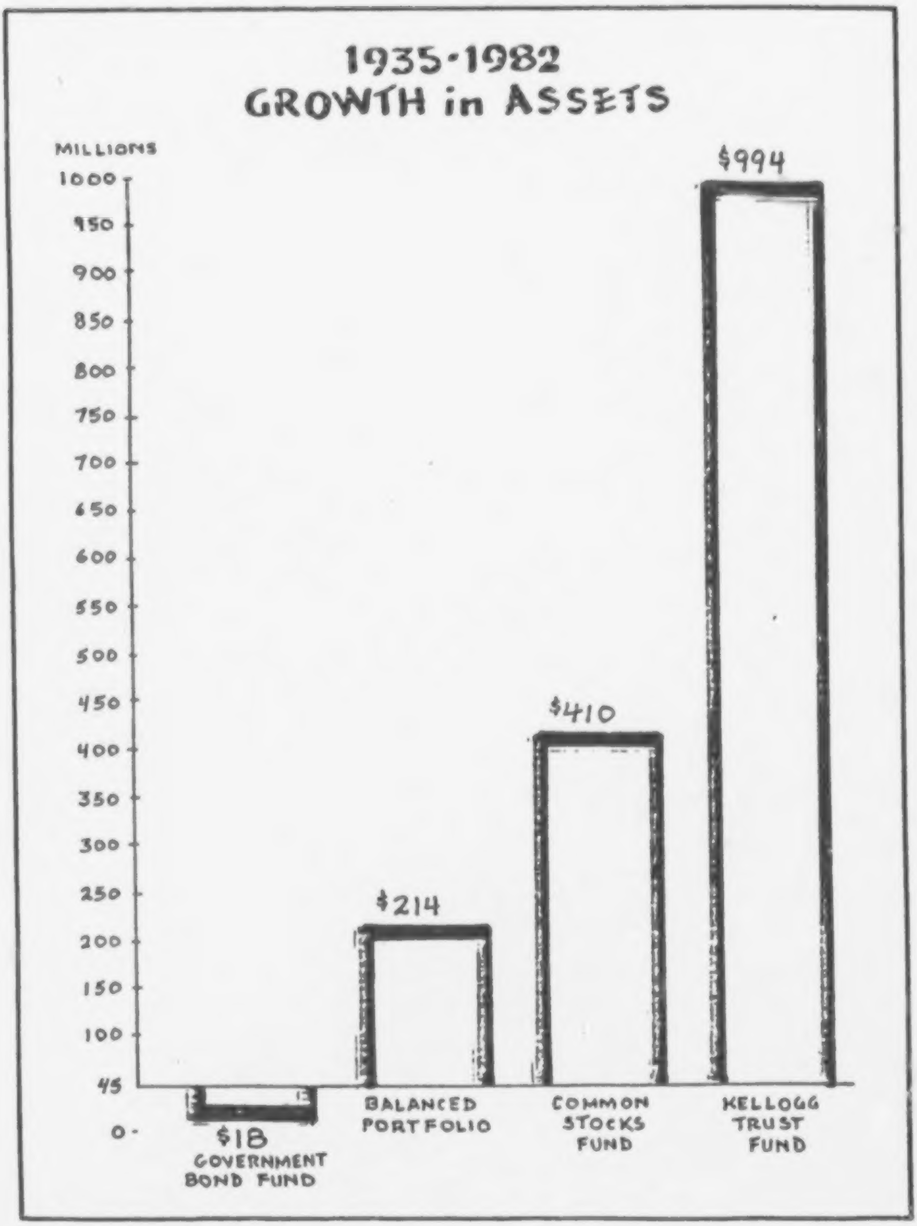
IV. THE KELLOGG FOUNDATION'S SITUATION RELATIVE TO EXCESS BUSINESS HOLDINGS

The W. K. Kellogg Foundation has "excess business holdings" as defined under the law, and outlined on page 4. The Foundation is the sole beneficiary of all income from a separate Trust (the W. K. Kellogg Foundation Trust) which currently owns approximately 47 percent of the outstanding shares of the Kellogg Company, an international pioneer and leader in the ready-to-eat breakfast cereal industry. The Kellogg Foundation is concerned since the excess business holdings provisions require the Trust to sell by 1994 a major portion of its Kellogg stock to meet the excess business holdings provisions of the existing law. The Foundation's concern is with the impact such a sale will have on the potential value of its assets, and on its continued ability to fund charitable projects and organizations.

As the two charts on following pages illustrate, the Kellogg Trust Fund (composed entirely of Kellog Company stock) has grown dramatically in value from a base of $45 million in 1935 to a current value of $994 million. This rate of growth exceeded the same historical performance of government bonds by 2,150 percent; common stocks by 811 percent; and a balanced portfolio of stocks and bonds by 376 percent. In addition to this dramatic growth in value by Kellogg stock, the Kellogg Trust fund paid out $569 million for charitable activities of the Kellogg Foundation; far more than what would have been available from any other type of investment for this same period.

The Kellogg Trust's 1982 distribution to charity was 136 percent more than possible from a diversified portfolio; 334 percent more than form a 50 percent stock/50 percent bond (balanced) portfolio; and 2,553 percent more than would have been possible from a fund comprised of government bonds.

The record shows that—in the case of the W. K. Kellogg Foundation—the holding of concentrated stock in the Kellogg Company has continued to be in the best interests of charity and the thousands of charitable organizations which receive financial support from the Foundation.


1935-1982
GROWTH in ASSETS
MILLIONS
1000
950
900
850
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750
700
650
600
550
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450
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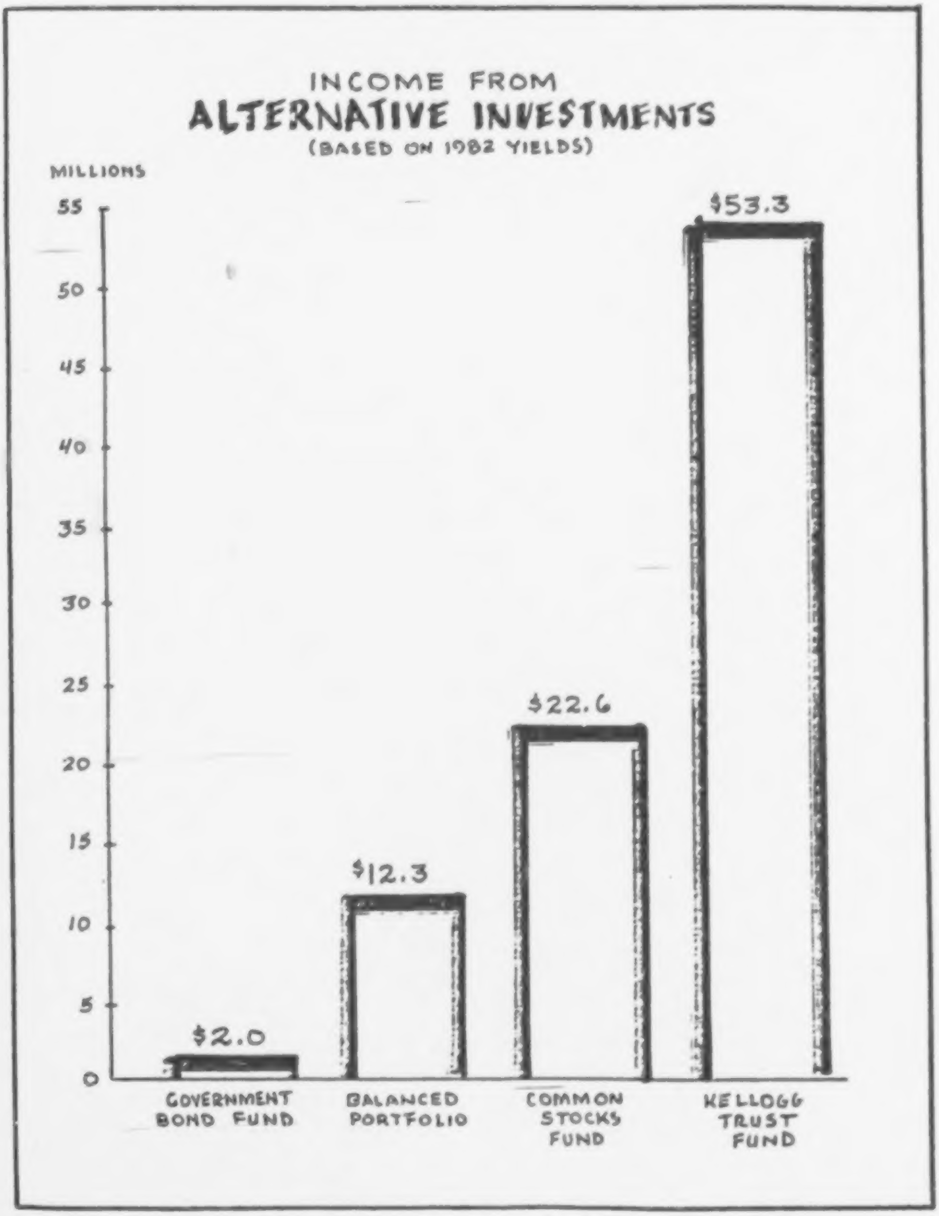
350
300
250
200
150
100
45
0
$18
GOVERNMENT BOND FUND
$214
BALANCED PORTFOLIO
$410
COMMON STOCKS FUND
$994
KELLOGG TRUST FUND


INCOME FROM
ALTERNATIVE INVESTMENTS
(BASED ON 1982 YIELDS)
MILLIONS
55
50
45
40
35
30
25
20
15
10
5
0
$2.0
$12.3
$22.6
$53.3
GOVERNMENT BOND FUND
BALANCED PORTFOLIO
COMMON STOCKS FUND
KELLOGG TRUST FUND

V. SUMMARY

It has taken our nation almost a century to develop its private foundations. This pool of capital began after the turn of the century through personal initiatives by Carnegie, Ford, Rockefeller, Kellogg, Mott, Kresge and others who contributed shares in the industries they had built. They say foundations as the way to further charitable purposes and at the same time to provide for the continuance of their businesses or their orderly tranfer to new ownership.

Private foundations offered the opportunity for entrepreneurs, during their lifetimes, to participate in trying to improve their cities, the nation, and even the world. They were motivated by a desire to help, and our government gave them the incentives they needed to try. Those factors led to the development of private foundations in America—charitable institutions which now hold and manage approximately $43 billion.

Today, the incentives are disappearing. The 1969 Tax Act—and specifically its provisions relating to excess business holdings—is partially responsible.

As the Commission on Foundations and Private Philanthropy (Peterson Commission) noted in 1970: "We objected to the way the new law (1969 Tax Act) limits foundation ownership of corporate control stock * * *. A payout requirement, prohibitions on self-dealing, and greater disclosure—all required by the new law—seem to us to provide a better solution than an arbitrary limit on percentage of ownership * * *. We believe this provision could easily retard the flow of large pools of capital into philanthropy."[4]

That prediction has become a reality since 1969. Therefore, the excess business holdings provisions of the 1969 Tax Act (Section 4943) can and should be eliminated by Congress because:

1. Public interests are safeguarded by other parts of the 1969 Tax Act;
2. The excess business holdings provisions are retarding the creation of new foundations in America;
3. Through these provisions, private foundations alone among all charities in our nation are hampered in their investment decisions; and
4. The excess business holdings provisions threaten the ability of the Kellogg Foundation and other foundations to maintain the outstanding level of charitable giving which has characterized their grantmaking over many decades.

The over-riding question may be one of long-term public interest and policy. Public opinion polls about foundations over the past ten years establish clearly that a great majority of the public has favorable feelings about the utility of foundations. The provisions of TRA69 which discourage, impede, and limit incentives to the growth of private foundations are out of step with the public view of the value of foundations. The excess business holdings provisions should be eliminated and the incentives restored for creating new foundations.

NATURAL RESOURCES DEFENSE COUNCIL, INC.,
New York, N.Y., July 19, 1983.

Mr. JOHN SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing on behalf of the Natural Resources Defense Council, Inc. in connection with your important oversight hearings held recently on private foundations. NRDC did not present oral testimony at the late June hearings, but it is my understanding that the record remains open and I respectfully request that these comments be included in that hearing record.

The Natural Resources Defense Council, Inc. is a public interest legal and scientific organization with offices in New York, Washington, D.C. and San Francisco, California. Since its founding in 1970, the Natural Resources Defense Council has grown into a major public interest organization representing over 43,000 members nationwide in a multi-disciplinary program to protect public health and preserve the nation's environment. Our activities cover a wide range of environmental and public health issues, and our staff of lawyers, scientists and research associates is active in administrative, legislative, and judicial forums, and devotes significant resources to environmental policy analysis and public education.

Private foundations have played and continue to play a central role in NRDC's operation. It was one such charitable institution, the Ford Foundation, that actually helped give birth to NRDC. Two parties, one a group of New York Wall Street lawyers, and the other a number of recent Yale Law School graduates, separately approached the Ford Foundation in 1969 to request funding for the establishment of a novel public interest law firm dedicated exclusively to environmental protection. The Ford Foundation brought these two groups together and provided major funding for the first ten years of NRDC's existence, including a substantial contribution and challenge grant to our endowment.

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[4] Peterson Commission Report, p. 167.

Although NRDC is not presently receiving Ford Foundation assistance, we remain critically dependent on private foundations for our support and operations. Our 1983 budget of over $5 million includes expected gifts from over 100 private foundations totalling two million dollars. Withdrawal of this foundation support would compel NRDC to cut back sharply on our activites precisely at a time of growing complexity of environmental issues and expansion of our organization's activities.

NRDC is a national environmental organization, but it has focused a portion of its activities on New York City where we maintain our national headquarters. Let me give you two examples of the essential role foundation support has played in our New York City efforts.

A PUBLIC-INTEREST—GOVERNMENT PARTNERSHIP

In 1978, New York City's public transportation system was on the verge of physical collapse. This was occurring largely because of the deferred maintenance that we now know has affected public transportation systems, highways and other physical investments around the nation. Two NRDC attorneys, Ross Sandler and David Schoenbrod, recognized the problem facing New York City's transit lifeline. They discussed their concerns with sympathetic officials and with the New York City Department of Planning. NRDC and the City Planning Department came up with the critically needed next step—a proposal for a report documenting the state of the transit system's disrepair and setting a realistic priority program for its rehabilitation and reconstruction.

What grew out of these discussions was a 12 month cooperative effort between the two NRDC lawyers and the planning commission staff. The result was the publication of "A New Direction in Transit," a 250-page report that has since played an essential role in shaping City transit policy and that will ultimately benefit over one million daily transit riders. Shortly after publication and widespread editorial comment on the NRDC-Planning Department report (see, for example, attached articles), the Metropolitan Transportation Authority (MTA), the region's transit agency, adopted a similar plan for systemwide rehabilitation based on the New Directions model. In 1981, with support from the state legislature, the MTA began a $6.6 billion capital revitalization effort for the nation's largest bus and subway and rail system.

Without private foundation support, the NRDC report, the springboard in many ways for the on-going systemwide rehabilitation, would simply not have occurred. Five private foundations—The Rockefeller Brothers Fund, The Fund for the City of New York, The J.M. Kaplan Fund, Inc.—gave a combined total of $50,000 to fund NRDC's participation in this cooperative effort. The support, which covered the salaries of the two NRDC staff members as well as printing of the 250-page report, was much less than what government would have had to pay for the services of two full time consultants of comparable breadth and experience. New York City's precarious financial condition at the time of this report would have made it very difficult, if not impossible, to fund a comparable effort using government funds.

The New Directions report and the role played in its development by private foundations is a classic, but by no means unique, example of how private foundations supporting public interest organizations can produce a demonstrable public benefit at a fraction of what it would otherwise have cost government to do the job.

THE STATE OF THE CITY'S ENVIRONMENT REPORT

A second example of the critical importance of private foundations in NRDC's activities is our plan to publish a major report on the State of New York City's environment. Environmental issues have grown increasingly complex over the past decade. Yet, particularly in recent years, the amount of readily available information for the public to use in debating important public policy questions has diminished. Public information programs at the state, city and federal environmental agencies have been cut back and there has been little to fill the void.

Faced with this situation, Natural Resources Defense Council, with private foundation funding, has stepped in to carry the ball. We are now engaged in a six month effort to obtain data from government agencies and outside experts on the outstanding issues facing New York City—air and water quality, toxic substances, solid waste, parks, and public transportation. In addition to gathering this information and presenting it in a simple straightforward way that will be useful to citizens, we plan to report on long-term trends in New York environmental quality and to identify crucial issues for future government action. As far as we know, no single document—whether government produced or independently prepared—has ever presented such a comprehensive, in depth, and, we expect, well-reasoned examination of this city's environmental issues.

In this effort, we are being assisted by nearly half-a-dozen foundations—the Achelis foundation, The Booth-Ferris Foundation, The Henry and Lucy Moses Fund, The New York Times Foundation, The Charles H. Revson Foundation, The Rockefeller Brothers Fund, The Robert and Marillyn Wilson Foundation—that support our urban environmental work. We are also receiving special support from places like the New York Community Trust which has funded an environmental intern program to assist us in the preparation of the City Environment report.

These are just two of many examples that I could cite to you of how private foundation support is helping the public interest community to assist in programs that prior to government budgetary problems were provided by states, cities or federal agencies. No doubt every member of NRDC's staff could also provide you with several illustrations of how funding by private foundations has made possible their similar contributions to the nation's environmental health and well-being.

We commend your Chairman and the members of the Committee for taking the time to investigate the extent to which private foundations are benefitting the nation as a whole. I am sure that your continuing examination of the record will convince you of the critical role which private foundations are playing and the need, perhaps now more than ever before, for you to do everything you can to assist them in their very worthwhile efforts.

Very truly yours,

ERIC A. GOLDSTEIN, *Staff Attorney.*

ATTACHMENT A

[N.Y. Times editorial, Dec. 30, 1978 [1]]

GETTING THE TRANSIT SYSTEM MOVING

It has been a rough two weeks for the Transit Authority and its subway riders. One man died of a heart attack while fellow passengers tried in vain to get a motorman to stop the train for help. A man and woman were mugged while a conductor apparently ignored their pleas for aid. A 17-year-old girl was kidnapped from a South Bronx subway station and raped. And two youths were beaten and robbed at gunpoint in a Queens station while one token-booth clerk watched and another subsequently refused to get off the phone to let transit police call for assistance.

But now comes a report asserting that all is not hopeless: the transit system can be made "safe, attractive and comfortable"—provided, of course, that enough money is obtained.

The report was prepared for Mayor Koch by the City Planning Commission, with the assistance of the Natural Resources Defense Council, an environmental group. It makes a comprehensive assessment of the municipal subway, bus, ferry and commuter rail systems.

The commission's proposals are ambitious but not far-fetched. Shunning expensive plans for new subway lines, it recommends concentrating on the rehabilitation of stations, trains and buses to make them safer and more attractive.

Despite a general air of dirt and decay, the transit system has some surprising strengths. Tunnels and elevated structures are in generally good condition. So are the subway cars, graffiti smears notwithstanding. The number of riders, after falling for three decades, rose slightly last year, probably because of a citywide economic upturn. But deficits are large and the Transit Authority has been cutting its cleaning, inspection and repair crews, with inevitable increases in dirt and malfunctions.

To reverse the decay, the Planning Commission makes a number of well-thought-out recommendations: better facilities for cleaning and repairing vehicles; overhaul of the subway trackbed and the addition of more air conditioning and noise suppressers for subway cars; new surveillance systems and call boxes to deter crime; accelerated replacement of buses and scrapping of antiquated bus routes; and experimentation with light-rail transit, moving walkways and hydrofoils. The proposals are assigned priorities—a salutary advance over the Metropolitan Transportation Authority's own 10-year "wish list."

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[1] Copyright 1978 by the New York Times Co., reprinted with permission.

The key problem, as always, is money. The proposed capital outlays would come to some $555 million a year for 10 years, roughly twice the current spending level. And the transit system is expected to suffer substantial operating deficits for years to come. The planners hope that some combination of Federal, state and city funds, along with increased ridership and decreased costs, will meet the financial needs. That hope may be sanguine.

Skeptics fear that increased outlays will simply disappear down a black hole—a fear not wholly allayed by the commission's report. The authors believe transit improvements would attract new riders as well as new business, but the evidence for that hope is thin—a handful of surveys and statistical analyses subject to conflicting interpretation. Even so, the report provides a valuable starting point for upgrading the transit system—the most credible proposals in years.

[From the New York Times, Dec. 29, 1978]

PLANNERS URGE SPENDING MORE ON FIXING SUBWAYS

(By Maurice Carroll)

Almost three times as much money than is spent now should be used to rehabilitate New York City's mass-transit system and the emphasis should be on the rider's comfort, a report to Mayor Koch recommended yesterday.

The Mayor, in response, said: "We will be more assertive in shaping transit policy. When you have a question of convenience for passengers, it has a very high priority for me,"

The report, by the City Planning Commission, recommended a $5.5 billion 10-year program. At the end, said Robert F. Wagner Jr., the commission chairman, the 700-mile subway system would be refurbished into "a modern metro".

Mr. Koch, in shirtsleeves, stood in the Blue Room at City Hall next to a chart showing two bars—the $1.085 billion a year that the Metropolitan Transportation Authority's own 10-year proposed program suggests for rehabilitating the transit system, and the $555 million recommended in yesterday's report, "A New Direction in Transit."

REPORT CALLED IMPETUS FOR MONEY

Across those bars was a red line at $200 million, which is what is spent now.

Where would the extra money come from?

In part, said one of the report's authors, David Schoenbrod, the very existence of the massive new document might help attract money. "The lack for many years of any kind of plan to show how the system can be rebuilt has had an impact on the funding level," he said.

Although the new report differed considerably from the Metropolitan Transportation Authority's own priority list, it was praised by Harold L. Fisher, the M.T.A. chairman, who said his staff would study it and report back to the Planning Commission.

Among the suggestions in the document:

The city should promptly clean up the "abominable" conditions at "the gates to the city, such as the subway stations at Grand Central Terminal, Pennsylvania Station, the Port Authority Bus Terminal and the Atlantic Avenue terminal in Brooklyn."

Hovercraft or hydrofoils or—more prosaically—a bus fleet using the Verrazano Bridge might be considered as replacements for the Staten Island ferries at night, when passenger volume is low.

Use of stations on commuter railroad lines within the city should be explored as supplements to the subways.

Trolley lines could replace buses on crowded Manhattan routes along 14th, 23d, 34th, 42nd, 57th and 125th Streets and Second and 10th Avenues.

Pedestrian passages could interconnect close-together subway lines such as the 51st Street station of the Lexington Avenue line and the 53d Street stop of the E and F lines, the IND and the Lexington IRT at Bleecker Street and at Grand Central Terminal and Fifth Avenue.

PRESENT SYSTEM CRITICIZED

The blueprint for improvement included such things as rebuilding subway tracks into continuously welded rail, construction of 15 new bus depots, placing about of new subway maps and repair of blurry public-address systems, air-conditioning the whole subway fleet, cutting the bus-replacement schedule to a 12-year cycle from the current 15.

The process should be simpler, too, the report said. "The system for approving projects was conceived to prevent fraud or mistake, but it does so by making it difficult to act at all," it said.

And it said the need was great. "A future that includes continued deterioration of transit implies deterioration of the city, with activity shifting to the suburbs and other parts of the country," the report asserted.

Overall, the report called for "a shift in emphasis from constructing new routes to rehabilitation of the existing subway and bus systems . . . with less emphasis on modernization of signal and power systems and more emphasis on improvements in passenger conditions, tunnels, elevated structure and other line structures and tunnel ventilation."

MAYOR ACCEPTS NEW RATIO

"I buy that without hesitation," Mr. Koch said in making the report public.

He noted that the current transit capital program has a 55–45 ratio between rehabilitation and new construction and accepted the report's recommendation that the rehabilitation share should grow to 65 or 70 percent.

As the document made clear, City Hall has often been the junior partner in a transit team that includes the M.T.A. and the city, state and Federal governments.

What then, the Mayor was asked, would be the impact of the new report?

Considerable, said Mr. Koch. An inveterate subway rider before he became Mayor and a member of the appropriation committee on transportation when he was in Congress, he has a particular interest in mass transit and he promised yesterday to persist in what he said was a newly assertive City Hall attitude toward transit planning.

FIRST COMPREHENSIVE REVIEW

Mr. Fisher, too, praised the new report as "very supportive of the partnership we have developed over the past year."

Mr. Wagner described it as "the first comprehensive review ever done" and said that, besides providing a blueprint for streamlining the current "cumbersome process" of multiple reviews for transit capital plans, it would be "a basis for informed discussion."

Where would the added money come from?

That, said Mr. Koch, is "a decision for the Congress and the President." The report noted that it was also a decision for the Legislature and the Governor. It recommended, essentially, that the city provide the plans and the other two levels of government most of the money.

What relationship does the new package of proposals bear to the much-discussed Westway and the possibility that some of the mass-transit money might come from a trade-in of that controversial proposed highway along the Hudson River shore of Manhattan?

Mr. Koch, a late convert to the pro-Westway side, sighed.

"I thought you might ask that," he said. "The answer is that this has no bearing on Westway. That road is a one-shot thing." And the money for it, he said, was "insignificant" compared with the multimillion-dollar proposals embodied in yesterday's report.

THE NATURE CONSERVANCY,
Arlington, Va., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: It has come to our attention that the Oversight Subcommittee of the House Ways and Means Committee has scheduled hearings on private foundations the latter part of this month. Having received substantial support from such foundations, The Nature Conservancy believes a brief review of its experiences will be helpful to the members of the Subcommittee.

In its 31 years of non-profit, privately funded operations, The Nature Conservancy has brought under protection more than 2 million acres of carefully chosen wetlands, barrier islands, virgin forests and unploughed prairie remnants, and other examples of rapidly disappearing natural communities. These unique examples of our natural systems harbor numerous threatened species of plants and animals and constitute a priceless genetic and economic resource as well as an aesthetic and spiritual one for present and future generations of Americans.

The Conservancy is almost entirely dependent on contributions received from the private sector—some 350 private foundations, 165,000 individuals and more than 500 corporations which share our belief in the necessity of protecting our rich and diverse natural heritage. Such support has resulted in the preservation of irreplaceable natural land and water systems in all 50 States. It also permits us to own and manage the largest private sanctuary system in the United States, if not the world. And, at this time, The Nature Conservancy is probably acquiring more land for preservation of rare and endangered natural systems and species than any other agency, public or private.

In recent years, over one-half of our total revenue has been contributed by private foundations. Each year we are the recipient of private foundation grants ranging in size from less than $1,000 to, in a very few cases, as much as $10–25 million. (The larger grants are normally made in the form of pledges and disbursed over a period of years.) This foundation support is critical to The Nature Conservancy, particularly now, when we are being challenged to expand our conservation efforts to compensate for a heavily reduced government role.

As a result of federal budget cuts in the environmental area—several times as severe on a percentage basis as cuts for health, welfare, education and the arts—the responsibility for protecting this nation's most threatened natural systems, and the rare plant and animal species they harbor, rests in large measure with the private sector. In a difficult economic climate, this represents a severe test of private conservation capabilities. To help meet this significant challenge, The Nature Conservancy has been able to obtain a number of major foundation grants to help us undertake several important new conservation initiatives.

The newest of these initiatives is our recently announced five-year, $50 million private/public effort—The National Wetlands Conservation Project—to protect outstanding examples of our country's most threatened aquatic and water-related ecosystems. The program was initiated with the largest grant ever made by a private foundation for conservation purposes; a $25 million 1:1 challenge grant from the Richard King Mellon Foundation. The project is expected to include at least one major wetlands project in each large region of the country, and to serve as a demonstration of what can be accomplished through joint private and (mostly state and local) public effort under private-sector leadership. We anticipate that the total value of land protected under this program will be at least $50 million.

The Conservancy's Katharine Ordway Endangered Species Conservation Program was launched early this year with a $5 million, 1:2 challenge grant from the Goodhill Foundation of New York. The program (named for the founder of the Goodhill Foundation) is designed to protect some of the vanishing habitats of plant and animal species in greatest danger of early extinction. By protecting these areas, we expect literally to rescue scores and perhaps hundreds of America's most endangered species from imminent disappearance. Over the next three years, the program should lead to the creation of at least 75 new preserves across the country worth at least $15 million.

These grants from the Mellon Foundation and the Goodhill Foundation are particularly noteworthy as they follow earlier multi-million dollar donations from these foundations. In 1980 the Mellon Foundation pledged a $15 million challenge grant to the Conservancy to set aside for preservation some of the Southeast's rapidly dwindling bottomland hardwood forests. During the same year, the Goodhill Foundation helped the Conservancy launch the National Critical Areas Conservation Program, aimed at preserving examples of our most threatened natural systems and communities, with a $10 million 1:2 challenge grant.

The Conservancy has received significant financial support from other private foundations as well. Our California Critical Areas Program, a three-year effort to secure the protection of representative examples of 11 imperiled natural community types, had been the recipient of a number of foundation grants of $1 million or more each. Similar comprehensive state-wide campaigns are in progress in a number of states, including Ohio, Oregon, Minnesota, Maryland and Florida, with more in the planning stage. Such efforts would simply not be possible without foundation support.

Foundation support has also enabled the Conservancy to work cooperatively with state governments in establishing innovative state Natural Heritage (Inventory) Programs. These comprehensive inventory efforts, now established in more than 30 states, provide the Conservancy and other private and public agencies with sound ecological data on the natural areas and flora and fauna most in need of protection. This results in the effective and efficient use of scarce private and public conservation dollars. The Andrew W. Mellon Foundation has made a number of major grants to these programs, most recently a $1 million grant which will help extend the heritage process all across the country. Other foundations have supported individual state heritage programs, and a generous grant from the J. N. Pew, Jr. Charitable Trust led to the establishment of a New England Regional Heritage Program, the first such regional inventory, last year.

As these examples indicate, private foundation giving has been crucial to The Nature Conservancy and (we would expect) to other conservation organizations as well. Recent studies suggest that as little as 1 percent of all philanthropic giving is directed to conservation needs. The experience of The Nature Conservancy indicates that private foundations are providing a major share of such giving. We believe these foundations should be commended for recognizing an important national need and for providing significant financial resources to address that need. Their support of private and public sector conservation endeavors is an example of responsible philanthropic leadership.

The Nature Conservancy appreciates this opportunity to comment on the role of private foundations and requests that this letter be made an official part of the hearing record.

Sincerely,

William D. Blair, Jr., *President.*

National Presto Industries, Inc.,
Eau Claire, Wis., June 6, 1983.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
House Office Building, Washington, D.C.

Dear Mr. Salmon: I was delighted to learn that Congressman Rangel, Chairman of the Subcommittee on Oversight of the Committee on Ways and Means has announced hearings to examine the rules governing private foundations to be held on Monday, June 27, and Tuesday, June 28, 1983.

An opportunity to present personal testimony at the hearings would have been requested, but prior commitments prevent my having the opportunity to be in Washington at the end of June. Under this circumstance, I would appreciate your including the following comments in the record of those hearings:

As President of three private foundations, I have had occasion to closely observe the impact of the Tax Reform Act on the operations of private foundations. Many of the provisions of the 1969 Reform Act have killed or are in the process of killing private charitable foundations. As a result, Congress' purpose in exempting charitable foundations from taxation has been subverted. That purpose was, as you are no doubt aware, to encourage relatively small units to explore and refine gifts to worthy religious, charitable and educational institutions, recognizing that such gifts cannot be made effectively by the central government. Due to the fact that the federal government must, as a practical matter, act with a broad brush, it is not in a position to make the detailed study required for truly effective awards. In today's economy the benefit of effective gifts could be coupled with a reduction of government spending for such expensive budgetary items as welfare and education if the private charitable foundations were not being strangled by the 1969 Act.

One of the most destructive provisions of the 1969 Tax Reform Act is IRC Section 4943. That section requires disposition of stock from foundations and/or members of a family where there is an association between the two and where generally, combined holdings exceed 20 percent of the outstanding stock. It has severely inhibited the creation of new foundations. Prior to the 1969 Act, foundations were frequently created through contributions of stock—usually blocks of stock controlling a business which the donor had developed during his lifetime. Furthermore, it has badly depleted the capital of many of the remaining foundations. Since in most circumstances the corporate stock owned by the foundation is thinly held, the foundation or family must often sell stock at less than its cash value, let alone its book value. Such forced sales result in severe erosion of foundation capital which in turn destroys or diminishes the base from which future charitable contributions can be made. The burden of making charitable contributions thus has fallen back onto the federal government, a duty which it does not perform efficiently and one, moreover, which it can no longer afford.

The policy behind limited ownership and compulsory disposition of such stock is questionable. The purported concern of Congress when it passed IRC 4943 was that a foundation which owned a large block of a corporation's stock would be in a position to assert business control. As a result, the interests of the foundations' managers would be diverted to the maintenance and improvement of the business and away from their charitable duties. IRC 4943, however, does not properly address this concern, since as a practical matter, there are very few professional private foundation managers willing to devote their total efforts to a foundation's charitable purposes. Most foundation managers serve for little, if any, pay and thus devote only part of their time to foundation matters and the balance to their own businesses. Surely, to the extent that the time is devoted to business interests that serve both the foundation manager's own and the foundation's needs, the foundation is better off, since the manager is both preserving and increasing the foundation's capital base on a full time basis. Furthermore, as with family farm units, heavy family ownership in corporate enterprises is desirable from the point of view of public policy. Reduction of such ownership only serves to make a healthy, independent organization a prey to attacking "takeover artists", a phenomonen of the late 70's and 80's. Such takeovers have been detrimental to the economy, since they have in many cases resulted in the death of ongoing business, as the acquirer oftentimes simply sucks the liquid assets out of the target company and throws the remains to the wolves. The ability to withstand such attacks or even avoid temptation of the attacker, is measured by the holdings of what had been healthy private enterprise, held in conjunction with viable foundation interests.

Even if IRC 4943 did further Congress' goal, it would hardly be an efficacious means of doing so. It is akin to a cure which in the process of treating the disease also kills the patient. Surely a rifle instead of a shot gun approach to the problem would be more effective, for example, a requirement that a foundation manager devote a specified portion of his time to foundation business. Such an approach would accomplish Congress' goal without the devastating result of inhibiting the creation of new foundations and severely eroding the capital of existing foundations.

Moreover, the compulsory disposition provision creates conflicts of interest. For example, in situations in which corporate stock is selling at less than book value, it is patently in the best interest of the corporation's stockholders for the corporation to repurchase its own stock in the market. All of the stockholders would receive the benefit of stepped-up book value per share and reduction of the after-tax monies which must be paid out to satisy dividend requirements, or alternatively, an increase in dividends to each of the remaining stockholders. However, such a repurchase would be highly detrimental to the interests of the family stockholders and foundation, since for each share purchased by the corporation on the open market, a proportionate number of shares from the family shareholders' and foundation's holdings would have to be sold. Corporate repurchase of shares would thus force the family stockholders and/or foundation to sell their stock for less than its value and reduce the control stock, thus making the company vulnerable to a takeover attack.

Finally, the provision effectively creates a classic case of deprivation of due process of law. It requires that the stock be sold by a given time, regardless of the market price within the appropriate time span. No one needs to be reminded of the malaise in the market place from 1966 through August of 1982, which saw stocks selling at a fraction of their intrinsic value. A repetition of this condition is fully foreseeable.

On the basis of the foregoing, I strongly recommend that IRC Section 4943 be repealed. Such repeal will once again encourage the creation of new private foundations and prevent any further erosion of the remaining foundations. With a healthy private foundation base, we will be able to achieve Congress' objective of promoting efficient and effective gifts as well as shift much of the burden of supporting welfare, education and other charities from the taxpayer to the private sector.

Sincerely,

NATIONAL PRESTO INDUSTRIES, INC.,
MELVIN S. COHEN,
Chairman of the Board.

National Society of Fund Raising Executives,
Washington, D.C., July 18, 1983.

Hon. Charles B. Rangel,
Chairman, Subcommittee on Oversight, House Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Rangel: The National Society of Fund Raising Executives (NSFRE) welcomes the opportunity to support the elimination of tax disincentives for gifts to foundations as proposed in H.R. 3043. We further appreciate the opportunity to file this supporting statement to be entered in the record of the Subcommittee on Oversight Hearings on Private Foundations (June 27, 28, 30, 1983).

NSFRE is a national society of more than 4,000 professonal fund raising executives. Our membership comes from all aspects of private philanthropy (education, health, youth, social service, civic) and supports a rules change that would treat gifts to private foundations the same as gifts to other charities.

Our membership has first-hand knowledge of the negative impact current restrictions on giving to foundations have had. Foundations are less able today to support the critical work of the Private Sector than they were prior to enactment of these restrictive rules.

As an indication of our support the Board of Directors NSFRE unanimously adopted the following resolution at its meeting in Chicago, Illinois, July 16, 1983:

"The Board of Directors, National Society of Fund Raising Executives, strongly endorse the elimination of tax disincentives for gifts to foundations as proposed in H.R. 3043. Further, that the Board of Directors, NSFRE, supports this legislation and urges its enactment."

We, as a Society, believe governmental support of Private Sector initiatives is well stated and that the adoption of H.R. 3043 will further implement this support.

Sincerely,

Thomas G. Sanberg,
Chairman of the Board.

New England Medical Center, Inc.,
Boston, Mass., June 17, 1983.

Hon. Dan Rostenkowski,
Chairman, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.
(Attention: John J. Salmon, Chief Counsel.)

Dear Mr. Chairman: It is my understanding that the Ways and Means Subcommittee on Oversight will be holding hearings on June 27 and 28, 1983, to assess the effectiveness of current federal requlations governing foundations. On behalf of New England Medical Center, Inc., I ask that this letter be made a part of the official hearings record.

New England Medical Center has been the beneficiary of awards from foundations across the country for a wide range of activities from basic biomedical research to facilities expansion. Without the interest of the foundation sector in our work over the years, much of our patient care and research efforts would not have been possible. Now, however, with NIH funds actually decreasing in real dollars and with state and federal mandates for hospital cost containment accompanied by reductions in government reimbursement rates, the support of the foundation sector has become a critical factor in all aspects of our work as an academic health center.

To give you, Mr. Chairman, and the members of the Subcommittee a better understanding of the range of activities at New England Medical Center supported by foundations, I offer the following sampling:

The Rockefeller Foundation, over 8 yrs. (1970's), $1.2 million.

Purpose: To establish a Geographic Medicine program in NEMC's Department of Medicine. This support has allowed the Medical Center to develop a world class Geographic Medicine division involved in research on the major illnesses afflicting humans, both here in the U.S. and abroad. Members of the Department are now working in such places as Guatemala, Brazil, Egypt, Bangladesh, The Gambia and Costa Rica.

The Commonwealth Fund, 1980, $200,000.

Purpose: This award provided "start-up" support for a unique system for providing the highest quality, cost-effective health care to the Medicaid population of Metropolitan Boston, involving 17 teaching hospitals and 28 neighborhood health centers in the greater Boston area. Now called the Commonwealth Health Care Corporation, this major experiment in managed health care is entirely a private sector initiative.

The Robert Wood Johnson Foundation, 1980-1984, $800,000.

Purpose: To organize and implement a General Medical Group Practice to provide primary care to the residents of our catchment area in downtown Boston, a medically underserved population. These funds support the conversion of services to a group practice model, the development of a quality assurance program and a residency program, as well as systems reorganization and technical assistance. The General Medical Group Practice Program at New England Medical Center is growing at a rate of 30 percent per year.

The Whitehall Foundation, 1982-1984, $110,000.

Purpose: To fund a major research program on the effects of leukemia cells on the body's production of red cells. This work is on the cutting edge of the study of leukemia and the search for its cure.

The Commonwealth Fund, 1983, $72,000.

Purpose: To examine the role of the Academic Health Center in the health care industry of the future. This project is directly related to changing government and private perceptions of health care costs and health manpower needs.

The Kiwanis Foundation of New England, 1980, $245,000.

Purpose: To create the first Pediatric Trauma Institute in the country at New England Medical Center. Trauma kills more children in the U.S. than all diseases combined. The Foundation's initial and continued support has allowed the Medical Center to provide a comprehensive, multi-disciplinary, regional system to care for the critically injured child beginning at the injury site.

The Kresge Foundation.

The Frederick J. Kennedy Memorial Foundation, Inc.

The Permanent Charity Fund of Boston.

Godfrey M. Hyams Trust, 1979-1982, $1,000,000.

Purpose: To construct the new Floating Hospital for Infants and Children, a premier pediatric facility dedicated to caring for children with serious and complex illnesses. Together these foundations provided one-sixth of the funds needed to be raised from the private sector. While adding no new beds, the new Floating New England Medical Center's pediatric unit, replaced outdated pediatric facilities and for the first time consolidated the Medical Center's x-ray, laboratory and operating room facilities. This new facility forms the technological foundation for New England Medical Center's future.

While this may seem to be an impressive list, it by no means tells the whole story. The support of the foundation community, often in conjunction with government of other private interests, can make the financial difference critical to the full development of research. Our efforts to improve patient care and patient care management, our work to develop basic science and to transfer that basic knowledge to the preclinical and finally to the clinical stage, all depend on the consistent support of many foundations. This system of philanthropy is unique to the United States, but its beneficiaries are worldwide.

Today, the federal government is retrenching. The corporate community cannot or will not "take up the slack." In many cases, the nation's foundations are the only place for the medical community to turn for support.

As a physician, scientist and administrator, I am grateful to the foundation community for their ongoing support of new and innovative approaches to health care and research. On behalf of New England Medical Center, I urge the Subcommittee to support this uniquely American private sector initiative through tax incentives and through the clarification and simplification of regulations affecting charitable foundations.

Sincerely,

JEROME H. GROSSMAN, M.D., *President.*

NEW HAVEN PUBLIC SCHOOLS,
New Haven, Conn., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: It has been brought to my attention that you are in the process of compiling information pertaining to activities of private foundations for presentation to the Oversight Committee of the House Ways and Means Committee. I am very pleased to respond on behalf of the New Haven Foundation, New Haven, Connecticut, so these comments may be included as an official part of the hearing record.

The New Haven Public Schools and the New Haven Foundation have shared a long-standing relationship in educational activities and projects which have provided direct benefit for the school children in New Haven. For well over a decade, the New Haven Foundation has favorably responded to requests for support for a variety of programs in arts education, special education, computer education development, staff training, teen-age parenting, instructionally effective schools, to name but a few.

New Haven is a very urban school district of modest size—18,000 students. In former years, there were many state and federal competitive grant opportunities for districts of our size and characteristics. We had been rather successful in the preparation and award of such competitive grants. In recent years, however, the majority of these funding sources have been eliminated, particularly on the federl level, with monies now being distributed on a relatively equal per pupil basis statewide, regardless of student need. Such practice, while providing a windfall to wealthier suburban school districts, has presented serious hardship to urban school districts, whose financial assistance is left to a municipality with a continually eroding tax base.

The willingless and benificence of the New Haven Foundation have not only allowed our school district to design programs that address on-going needs, but also permit us to develop initiatives that enable us to institute changes within the system that will better serve the mission of the New Haven Public Schools.

I have enclosed a recently prepared review of collaborative efforts of the school district and the New Haven Foundation. It not only reflects the variety of programs and services made possible, but also refers to the intent of the New Haven Public Schools to institutionalize or assimilate these programs, once they have been firmly established with New Haven Foundation support.

Should there be any other opportunity to address the positive impact of foundation support for education, such as that exhibited by the New Haven Foundation, I would be pleased to offer such testimony, written or otherwise. After July 1, 1983, you may contact me at the Connecticut State Department of Education, when I will assume the duties of the Commissioner of Education, State of Connecticut.

Sincerely,

GERALD N. TIROZZI,
Superintendent of Schools.

Enclosure.

STATUS REVIEW OF PROJECTS/PROGRAMS FUNDED BY THE NEW HAVEN FOUNDATION FOR THE NEW HAVEN PUBLIC SCHOOLS, 1977–1982

Programs and projects funded by the New Haven Foundation for the New Haven Public Schools may be grouped, for the sake of discussion, in two separate categories—namely, those involved with process, and those directed toward product.

First are those projects which were prepared and implemented to focus on an identified problem, examine the causes, explore resolutions and to provide expertise and guidance in the process. These projects, if successful, would not be replicated in future years. Rather, the results gained and processes developed were to be implemented in future delivery systems—in the classroom, improved teaching techniques, organizational changes etc.

In the second category are those projects whose goal was to institute new programs. Change and innovation are prerequisites for a productive and successful educational system. Recently, however, economic constraints on both the local, state and federal levels have not encouraged such change. No-growth budgets have become the norm in this high rate inflationary cycle. The new federalism advocates and practices a sustained withdrawal of federal financial support to education. The state plan for equalizing educational opportunity only indirectly impacts on the local educational agency. The prime beneficiary is the municipality, not the school system. It is within this climate, that the New Haven Public Schools, with the generous cooperation of the New Haven Foundation, has been able to initiate some new and sorely needed programs which have been institutionalized in subsequent years.

Programs and activities relating to the Arts supplemented by the New Haven Foundation will be treated separately.

PROCESS ORIENTED PROJECTS

While it is difficult to make clear distinctions between the general outcomes of various programs, some projects more naturally fall into the process category.

Some, such as Language Arts (1977), Teenage Health Parenting (1978) and Family Life Training (1978) enabled members of the system to examine current curriculum practices, assess changing needs and design necessary curriculum changes. These projects were all successful, resulting in curriculum revision and improved methodology recommendations.

Other projects, such as Pisces (1978) and Behavioral Management Training (1981), provided the opportunity for teachers and administrators in specific schools—Lee and Clemente respectively—to investigate methods and models for improving school climate. Major areas of difficulty were reduced to identifiable dimensions and specific measures were introduced to resolve these situations. Consultants were used for in-service training. Immediate results, which remain in practice and are addressed regularly, include direct communication with parents, improved school climate and organizational responsibility. An additional outcome in Roberto Clemente Middle School was the development of a model program for mainstreaming special education students. These practices are now part of the regular operation of these schools.

A program currently funded, Instrumental Enrichment/Cognitive Development (1981–82) also provides intensive in-servicing, staff development and implementation of a program which will improve the cognitive functioning of 7th and 8th grade special education students.

A common characteristic of the above projects is in-service training and the provision of opportunities to put new skills into practice. Obviously, the activities originally funded by the Foundation would not be repeated; the benefits obtained, however, become part of the regular delivery process and the instructional program in the system. These positive changes, now part of system or school practice, are thereby assimilated as part of the entire program supported by local funding.

PRODUCT ORIENTED PROJECTS

Most of the projects funded or supported by the New Haven Foundation are designed for the direct delivery of service to students.

In the summer of 1978, a special Summer School Program was implemented for Lee High School students. This activity was also consistent with other activities focusing on Lee High described above. This program has been continued annually as part of the regular system budget. The Wilderness School Program (1977–78) provided matching funds for a state project enabling New Haven DCYS students to attend a summer program in New Hampshire. The state program has since been discontinued.

Considerable effort has made in the late seventies to redesign the educational programs for incoming freshmen in our secondary schools. The transition from smaller middle schools to a large seconary school, especially in the social atmosphere of the 70's, presented unusual difficulties for the students and the staff. Lee Freshmen Support Program (1977) and the Parent-Teacher Collaborative-Hillhouse (1977–78) projects resulted in smaller identified groups of incoming freshmen—"clustering" with respective staffing assignments, thereby affording more individual student attention, more individualized student programs, more meaningful guidance and counseling support and the enhancement of student self-esteem due to more individual attention. This concept and design proved to be considerably more productive and is now wholly supported by system funds.

A major activity with long lasting benefits to the system took place in 1978. The Summer Planning Program focusing on broad based needs for improvement of academic achievement, provided the blueprint for a thorough redesign of the assessment of pupil progress and need. Committees working in this program developed a thorough model for measuring performance objectives, designed plans for a locally developed criterion referenced testing program, incorporated a plan for greater parent-involvement, and prepared a preliminary plan to implement the state proficiency testing program. These activities were implemented system wide and have been strengthened each year. Support for this all embracing program is part of the local budget and costs between $10,000–$12,500 each year.

Initiatives suported by the New Haven Foundation for Research and Evaluation (1977–78) have resulted in the formation of an office for Research, Planning and Evaluation for the New Haven Public Schools. Foundation supported activities, such as analysis of pupil progress as measured by the Iowa Test of Basic Skills and the Criterion Referenced Tests, have proved invaluable to the sequential growth of the system. Continuation of these, as well as other evaluation efforts, is now part of the regular operation of the school system. Current funding is provided by a variety of allowable special fund sources, consistent with mandates for measurement of program growth and success. This year, more than $75,000 will be spent in this area.

Studies undertaken in 1980, supported by the Democratic Education Task Force project, have resulted in the system's compliance for various mandates concerning equal educaional opportunity and desegregation efforts. Resulting from the efforts of the Task Force was the adoption by the New Haven Board of Education of a policy for Democratic Education. This policy, in addition to assuring equal educational opportunities for all students, addressed the need for specific plans to provide racially balanced schools by state definition, as well as implement affirmative staffing plans at the individual school level supplementing the system plan. This overall plan is in effect, and is supported both by city and special funds.

Findings from projects described above, Teenage Health Parenting (1978) Family Life Training (1978), as well as the Lee Parenting (1977) project, have been of enormous benefit to the system as it provides needed education, training, and service to teenage parents. The development of the Teenage Health Parenting and Family Life consortium, composed of representatives of the New Haven Public Schools, Yale Child Study Center and the Hill Health Center provides ongoing attention to the needs of these students and explores all opportunities for possible programs and funding sources to provide them services. Programs, such as those provided at the Polly T. McCabe Center and at individual schools, are direct products of the earlier efforts and studies. Currently, more than $125,000 from federal state and city sources is used to provide these services. The Family Life Training program, currently supported by the Foundation, is a vital aspect of the overall system of education and service to these students.

The Health Aide/Orderly program (1978-79) has been continued each year, supported by various funding sources. This year, it was designated as a State Model for Promising Practices with the recommendation that it be replicated by other school districts. Currently 65 special education students are involved in this work-study program.

Programs for the Talented and Gifted (1978-80) initiated by New Haven Public Schools with the sustained support of the New Haven Foundation, have likewise continued to grow in their brief history. Modest efforts undertaken by the Potentially Talented and Gifted Program (1979) are now part of the regular program offered by the New Haven Public Schools. The program is targeted for students in grades 4-7. The major expense of the program is incorporated in the local city operating budget and is supported with two teachers from Chapter 11 funds.

The current grant, Urban Academy, supports one aspect of a major system-wide plan for the development of educationally effective schools. Briefly, the entire Urban Academy is a process whereby responsibilities concerning school issues are integrated with those affecting student achievement. Instructional plans for improvement are developed for each school by its school planning and management team. Training activities relating to the Urban Academy include workshops, information sharing, professional and personal interaction with nationally recognized educational and child developmental specialists. School staff, most notably the principal, assume new growth roles, particularly as leadership models.

New Haven Public Schools has received national recognition for its practices and plans for the Urban Academy. The Yale Child Study Center and the University of Connecticut have been intimately involved with its development since its inception. The full effect of its processes and activities will be realized in the years to come, while immediate gains are seen in improved achievement scores, realization of management-by-objectives goals, improved school management at the building level, etc.

In addition to the one-half administrator and secretary salaries supported by New Haven Foundation funds, there are many other costs associated with all the activities of the Urban Academy. The school system absorbs much of the expense through its staff development program. Other aspects of the system-wide project are supported by grants awarded in competition with other systems and by entitlements to the system

It is important to note that nearly every one of the product oriented programs supported by the New Haven Foundation has been assimilated into the regular school budget or is continued through the use of state or federal funds. The use of these special funds for these programs is not as easy as it may appear. In many instances, use of these funds is somewhat discretionary, within state or federal guidelines or regulations. These funds, could be used for a variety of other projects. Nonetheless, the New Haven Public Schools has made a deliberate effort to continue these programs—expanding them when possible and revising when necessary.

In some instances, the seed money provided by the New Haven Foundation enabled us to start a program or initiate a study. The successful operation of these model projects enabled us to attract other funding sources for an expansion of the project.

In retrospect, projects and programs supported by the New Haven Foundation have had meaningful and long lasting effects on the New Haven Public Schools. Likewise, applications submitted to The Foundation by New Haven Public Schools are prepared after considerable discussion and planning. The programs they describe are not intended as a "quick-fix" or band-aids for the system. They are developed for their long range potential, as indicated by the sustained effect of previously funded programs.

ARTS PROJECTS

Collaborative efforts of the New Haven Foundation and the New Haven Public Schools in the area of Art Education deserve special attention.

Through the 1970's the Foundation supported a variety of Arts programs for the New Haven Public Schools. The system, at the same time, saw the need to provide a more complete Arts education to its students. In 1979 the Arts in Education project was funded. This year-long study of both the needs of the system and possible curriculum changes resulted in a series of recommendations to the Board of Education. The Board accepted the report and thereby embarked on a revision of its Arts program. The Summer Institute for Teachers and Administrators (1980) resulted in the funding of a major proposal by the U.S. Office of Education. This Title 111-C program enabled the system to implement many of the recommendations of the study. The Arts Summer School (1980) program also provided opportunities for students.

The Comprehensive Arts program (1980-82) provided direct Arts experiences in classrooms throughout the city. (This program is reasonably well described in the attached article from the New Haven Advocate, June 1, 1983).

At the same time, the New Haven Public Schools serves as the applicant for all Community Arts projects (1980-82) which otherwise would have applied to the New Haven Foundation as individual applicants for education related Arts activities.

The current project for Conte Arts Magnet project (1982) supports one aspect of the magnet school. The Conte Arts Magnet School was started in 1981 with the award of five years of funds from the Emergency School Aid Act. The school opened, students registered, the curriculum was designed, the staff assigned, and the school year calendar of instruction and activities was established. Midway through the first year the federal government announced it was abolishing the funding source, in spite of its five year commitment. Rather than abandon its course, the New Haven Board of Education reaffirmed its commitment to the continuation of Conte Arts Magnet School, pulling together every available resource to support it. (Three other magnet schools in New Haven were similarly affected by the federal decision). A considerable portion of Chapter II funding was earmarked for magnet school continuation. Some salaries and transportation costs were absorbed by the city. Nonetheless, additional funds were necessary to continue the planned design of the school. Visiting artists, on an hourly basis, are supported by Foundation funding, as well as services of the Center for Theatre Techniques.

The New Haven Public Schools has every intention of continuing the operation of its four magnet schools, incorporating as much as possible into its own budget and eventually augmenting, services through the use of special funds.

[From the New Haven Advocate, June 1, 1983]

NEW HAVEN'S COMPREHENSIVE ARTS PROGRAM USES MUSIC, DRAMA AND DRAWING TO TEACH OTHER SUBJECTS—AND TO GIVE KIDS A LOVE OF ART FOR ITS OWN SAKE

(By Gabriel Cohen)

At West Hills School, a class of six- and seven-year-olds have designed a "supercar" complete with wings, a refrigerator, a bed, and a swimming pool. Their interest in cars was spurred by a visit from Henry Ford—or someone who "looked a lot like him." The visitor with the tophat and fake beard was actually Bill Derry, a drama specialist from the Comprehensive Arts Program of the New Haven Public Schools, who had come to help Linda Bray's first-graders learn about transportation.

Three months after the last in a series of visits from Derry, the kids are sitting Indian-style on the carpet, wriggling with the excitement of describing their project to a stranger. "We made cars—24 of them!" says seven-year-old Scott as he points to a long line of black paper Model T's stretched across two walls of the classroom. "We worked on an assembly line and we each made one part," adds six-year-old Michael.

Derry worked directly with the class and Bray, leading them through movement and drama exercises. "We made machines with our bodies," says six-year-old

Takema. (They related the movement of the joints in their own bodies to the functioning of machines.) And, of course, they discovered how cars are made. Three months is a long time in the memory of a first-grader, yet these kids display an impressive retention of the concepts and terms they learned with Derry, including such formidable words as "horsepower." When asked if they'd like Derry to return for more visits, the chorus of "Yeas!" is little short of deafening.

The Comprehensive Arts Program (CAP) sends arts specialists into all of New Haven's 26 public elementary schools, and eight middle schools. They are local visual artists, actors, dancers, storytellers, mimes, and puppeteers. Their work in the schools is based on one simple but powerful conviction: children learn better when they are actively involved in the process of learning. When education engages their emotions and bodies, as well as their intellects, they learn best of all. What better way to teach, then, than through art?

Mary Boyle is one of New Haven's most fervent advocates of the arts in education. She is a 1983 recipient of an Arts Award from the Arts Council of Greater New Haven in recognition of her outstanding work as arts coordinator of the public schools, and director of CAP. She describes a dramatic shift that has taken place locally in the past four years. In 1979, the New Haven Foundation sponsored a citywide arts education study, which found that while some schools sponsored art programs, and some artists and community groups were working in the schools, the resources were too scattered and fragmented. The city lacked an organized network to bring artists into the schools, and the artists and groups who did make contact had to do so under separate contracts with each school. The study committee concluded that the school system did "not treat the arts as central or essential to education," and it made 34 strongly worded recommendations for improvement.

Evidently, the Board of Education was listening, for it adopted a very supportive policy which declared that the schools would "teach all the arts, in a planned, ongoing, systematic manner, to all children." Inorder to carry out this tall order, the board decided to organize the various arts resources and programs under one central, coherent agency. The position of arts coordinator was established, and in 1980 the Comprehensive Arts Program was born.

New Haven students have been lucky. Unlike many cities, this one has not suffered drastic cutbacks in local arts eduction funding. Boyle and other arts administrators credit Superintendent of Schools Gerald Tirozzi for strong support. Nationally, however the Reagan administration has ravaged budgets for the National Endowments for the Arts and Humanities, as well as other crucial sources of federal support. The state has cut back as well, so CAP has found itself trying to maintain the same programs as three years ago, with half the state and federal funds.

Despite the Board of Education's support, the arts picture in local schools is not exactly rosy. Boyle notes that students can go through four years of high school without ever taking an art class. The high schools do usually offer electives in several art forms, but at the elementary level the schools hire only music teachers full time. The burden of teaching other art forms falls on the homeroom teachers, who must also teach all of the standard academic subjects. Not only are most elementary teachers ill-prepared to do in-depth teaching of the various media—the pressure to raise test scores and drill students in the three R's discourages many from devoting class time to arts activities. All too often the arts are viewed as a frill or a distraction. Therefore, CAP focuses on helping teachers discover the value of the arts as much as it works directly with the students.

When asked what she would do if the program were to receive a million dollar grant tomorrow, Mary Boyle replied, "Well, we could bring a lot of fantastic performances into the schools, but that wouldn't have much long-term impact, and it wouldn't contribute to the growth of the program.

We would want to do things that have a lasting effect, like training people and developing materials that could be used in the classroom. Of course, we could also use more staff." Currently, the program can afford to have only four full-time positions. Visiting artists and consultants are hired on a contractual basis. Although teacher training is a primary goal, Boyle stresses the need for full-time arts specialists in the schools—people who have both the time and training to work closely with teachers and students.

In addition to teacher training and classroom workshops, CAP also makes it possible for youngsters to have direct contact with local performing artists and groups. For example, fourth graders learning about "dance through the ages" have been treated to lecture-demonstrations and live performances by Margo Knis, and Blondell Cummings (from New York's Lincoln Center). Later this spring they will go to the Connecticut Ballet and participate in special master classes.

The Community Arts Resources Project exemplifies the work of the CAP. Funded by a grant from the New Haven Foundation, the project pairs all kindergarten through sixth-grade classrooms with arts specialists and organizations. Each grade focuses on a specific art form and curriculum area. So, for example, the third-graders relate the visual arts to the community, and fifth-graders experience American history through theater.

Rosemary Bliznick is a specialist who helps kids learn about math concepts through movement and dance. She describes a first grade classroom where the kids *seemed* to know the distinction between right and left: "The window is on the right, and the bulletin board is on the left," they told her. When the kids were asked to face the back of the classroom, however, their "sense of direction" seemed to disappear—typifying a major flaw in our traditional methods of eduction. As Joan Costello, formerly of the Yale University Child Study Center, explains, "Most schools emphasize learning the correct symbol rather than exploring the experience that symbol represents."

That's where Rosemary Bliznick comes in. Through movement games she led the kids to a personal, *concrete* understanding of spatial direction. "If they can feel it," she says, "they can learn it." In another class, she has the kids use colorful "stretchropes" to form geometric shapes. Clearly a geometry textbook is not the only way, or necessarily even the best way, to teach geometry. And the kids enjoy learning with Bliznick.

"One thing that seems to be missing in our usual approach to education is a sense of possible relationships between different curriculum areas," says Patricia Ansel, coordinator of the third grade community visual arts program. "The arts are a great why to integrate those areas."

Ansel does an exciting workshop which focuses on maps. The kids make a map of their bodies, of the community, and of the solar system. They learn about quadrant directions, and they are encouraged to decide what the important features of a community might be (hospitals, banks, schools, city hall, etc.) Finally they plan and create a three-dimensional map of their community. In the process, they gain important decision-making skills while learning about geography, anatomy, astronomy, drafting, city planning, and the various careers of city dwellers.

Mary Boyle adamantly points out, however, that the arts are not merely a clever way to make academic subjects more palatable. They have intrinsic values in and of themselves-values that are expecially significant to New Haven students, who often receive less early-childhood intellectual stimulation and have less access to cultural enrichment than their peers in wealthier communities. The arts are an ideal way to strengthen their vital developmental and social skills. The same holds true for all children. "If I could teach the arts all day long," says Mary Boyle, "and bring in other sources of information, I could give kids a complete education."

COAC
N.Y. COUNCIL ON ADOPTABLE CHILDREN
875 Avenue of the Americas, New York, New York 10001 • 212/279-4525

July 6, 1983

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Ways and Means
Subcommittee on Oversight

COMMITTEE ON
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WAYS AND MEANS

Mr. John Solmon
Chief Counsel
Committee on Ways and Means
U.S. House of Representatives
Room 1102
Longworth House Office Building
Washington D.C. 20515

Dear Mr. Solmon:

It is my understanding that your Committee is holding hearings on private foundations. I would very much appreciate the inclusion of this letter in the Congressional record.

The financial and educational role that foundations play in American society has made it possible for new organizations like to get off the ground and become institutionalyzed to fill a void for needed services.

When our founders decided to incorporate the New York Council on Adoptable Children they found initial support in the foundation community. The New York Foundation, the New York Community Trust and the Edna McConnell Clark Foundation gave birth to our agency and helped translate our mission into services and advocacy for children abandoned in public care needing permanent families.

It was the support of The Robert Sterling Clark Foundation, The Field Foundation The Booth Ferris Foundation, The Sherman Foundation and the Foundation for Child Development, in addition to those that got us started that helped COAC make a strong impact on the Child Welfare System. Since 1974 we have been instrumental in recruiting over 10,000 prospective parents for the children of New York and helped place more then 1,000 "special needs" children into adoptive homes. Children with handicaps, older or of minority background who would otherwise linger in public care unable to achieve their full potential as human beings.

Bureaucracies and systems are resistant to change even when there is consensus on the need for reform. It was the financial support of the foundations that make our advocacy possible and effective.

Today the Council on Adoptable Children receives half of its support through public funding sources. It is the foundation dollars, however that helps us innovate and demonstrate through new programs the way to better serve homeless children in need of parents. It is the way a free society can create new resources and develop its social institutions.

Sincerely,

Clara V. Barksdale
Executive Director

NEW YORK STATE BAR ASSOCIATION,
New York, N.Y., August 1, 1983.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, Longworth Building, Washington, D.C.

DEAR CONGRESSMAN RANGEL: Enclosed is a report of the Committee on Exempt Organizations on the impact of the Tax Reform Act of 1969 on private foundations. The report has been approved by the Executive Committee.

The report opposes enactment of the part of H.R. 3043 that relates to charitable deductions. While the elimination of any distinction between the charitable deduction allowed for gifts to private foundations and gifts to other foundations would simplify the Internal Revenue Code, we think that the differences between private and other foundations justify the continuation of the distinctions in present law, and we oppose any extension of the rule that permits a charitable deduction for the value, as opposed to the cost basis, of appreciated property.

The report recommends an extension to 10 years of the 5-year period in which a private foundation may dispose of excess business holdings acquired by gift or bequest after May 1969, an administrative procedure (similar to that which the Treasury Department has noted support) for extensions of all of the fixed disposition periods, and the elimination of expenditure responsibility for grants of $5,000 or less. It also makes recommendations with respect to other matters, including the definition of "public support" and of "disqualified persons", the rules relating to "taxable expenditures", and the excise tax imposed on the gross investment income of foreign private foundations.

Very truly yours,

WILLARD B. TAYLOR.

Enclosure.

NEW YORK STATE BAR ASSOCIATION

TAX SECTION

COMMITTEE ON EXEMPT ORGANIZATIONS

Report to House Ways and Means Subcommittee on Oversight Concerning The Impact of the Tax Reform Act of 1969 on Private Foundations

July 29, 1983

There are currently proposals pending in Congress to remove the distinctions between private foundations and public charities. This report will analyze the current law and the reasons for the differences in the treatment of public charities and private foundations, discuss the proposals for eliminating certain of the differences, and recommend changes to the regulatory rules applicable to private foundations.

Our recommendations, which are discussed in detail below, are as follows:

1. Deductibility of charitable contributions
   - (a) We believe that the differences between public and private foundations justify distinctions in the limitations on contributions, and we therefore oppose the enactment of portions of H.R. 3043 concerning deductibility of charitable contributions to private foundations. Specifically,
     - (i) Differences in percentage limitation on

This report was written by Jonathan Clune, Dale S. Collinson, Laraine S. Rothenberg, Edward R. Rover, Peter W. Schmidt, Aleena R. Shapiro, J. Edward Shillingberg, Ann F. Thomas and Mark D. Turkel. Helpful comments were received from Peter L. Faber, Albert Feuer, Willard B. Taylor, Clifford M. Warren, Henry Christensen III, Michelle P. Scott, and Robert J. McDermott.

contributions to private foundations and public charities should be maintained.

(ii) Distinctions in treatment given to donations of appreciated property to private foundations and public charities should be maintained.

(iii) The present carryover rules should be maintained.

2. Definition of public support

(a) The public support test under section 170(b)(1)(A)(iv)

(i) The mechanical 33 1/3 percent public support test or a pure facts and circumstances test with respect to organizations whose activities are directed at the public should be codified.

(b) The public support test under section 509(a)(2)

(i) The limitation on gross investment income should be increased to 50 percent.

(ii) Gifts and grants from substantial contributors up to a specified amount of the greater of $25,000 or 2 percent of the organization's support should be permitted in determining whether an organization is publicly supported.

(iii) The limitation on receipts from governmental units should be increased to the greater of $25,000 or 2 percent of the organization's support.

(iv) The distinction between grants and gross receipts from governmental units should be codified and clarified.

3. Definition of disqualified person - Self-Dealing

(a) Classification as a substantial contributor should be determined by reference to a moving period (the current year and a period of years immediately preceding the current year).

(b) Alternatively, classification as a substantial contributor should be based on whether, as of the year in question, the person has contributed 2 percent of total contributions received by a foundation throughout its existence.

(c) The $15,000 compensation threshold for determining whether a government employee is a governmental official should be raised.

(d) The self-dealing penalties imposed by Section 4941 should be continued.

4. Excess business holdings

(a) A 10-year disposition period for post-1969 gifts and bequests should be adopted.

(b) Administrative extensions to the disposition requirements should be authorized, with specific statutory guidelines and a statutory maximum on the length of such extensions.

5. Taxable Expenditures

(a) The conditions under which private foundations may make grants to public charities engaged in lobbying activities should be clarified.

(b) A presumption that a grant by a private foundation to a public charity engaged in voter registration activity is not a taxable expenditure should be enacted.

(c) The types of grants to individuals subject to the advance approval requirement should be identified in statutory provisions.

(d) Grants of $5,000 or less to individuals in an aggregate amount of, e.g., $25,000 or less, should be subject to certain expenditure responsibility requirements but not the advance approval requirements.

(e) Foundations should be permitted to rely upon the grantee's determination letter from the Internal Revenue Service in making grants to public charities even if such grant results in the loss of public charity status.

(f) Subject to appropriate safeguards, expenditure responsibility should be eliminated for grants of $15,000 or less.

(g) A taxable expenditure should not result if there is substantial compliance with the expenditure responsibility requirements.

(h) The Secretary of Treasury should be given authority to abate the first level penalty tax where the violation of the private foundation rules was due to a good faith error and was corrected within the correction period.

6. Miscellaneous

(a) The 4 percent tax imposed by section 4948(a) on the gross investment income of foreign private foundations should be reduced to 2 percent.

(b) The taxes on failure to distribute income imposed by section 4942 should be maintained.

I. Historical reasons for different treatment of public charities and private foundations

Charitable contributions first received preferential tax treatment in 1917 when contributions from individuals were made tax deductible. Revenue Act of 1917, § 1201(2), 40 Stat. 300, 330. The deduction, with some limitations, was extended to corporations in 1935. Revenue Act of 1935, § 102(r), 49 Stat. 1014, 1016.

The stated aim of providing such a deduction was to encourage private persons to share public social responsibility, either by relieving the government of burdens it would otherwise have to assume or by encouraging activities believed to be socially desirable. H.R. Rep. No. 1860, 75th Cong., 3rd Sess. 1939-1 (Part 2) C.B. 742; Treusch and Sugarman, Tax-Exempt Charitable Organization, Ch 1-B.02, C.01 (1983).

The early statutes did not distinguish between private foundations and public charities and, at first, the deduction was limited to 15 percent of the individual's taxable income. By 1954, the percentage limitation was 20 percent and the income base to which the percentage limitation applied was adjusted gross income, not taxable net income. See generally, Taggart, "The Charitable Deduction," 26 Tax L. Rev. 63, 76 (1970). A distinction between the entities to which a charitable contribution was made, in terms of deductible amount, was first drawn in the Internal Revenue Code of 1954. Contributions to churches, schools, hospitals and medical research associations were granted an additional 10 percent limitation, so that a taxpayer's contribution to these organizations was subject to a 30 percent limitation, rather than the 20 percent limitation that applied to contributions to other charitable organizations. Taggart, supra, at 76; Hopkins, The Law of Tax-Exempt Organizations, §23 at 354. Congress gave as the reason for this distinction a desire to encourage contributions to the particular organizations receiving preferential treatment. The Finance Committee report stated that the increased limitation would "aid these institutions in obtaining the additional funds they need, in view of their rising costs and the relatively low rate of return they are receiving on endowment." Report of Committee on Finance, H.R. 8300, June 18, 1954 at 29; see also Troyer, "Public Charities and the 1969 Act: A Look Ahead," 10th New York University Institute on Federal Taxation 109 (1971).

In the Revenue Act of 1964, the special class of organizations to which the 30 percent limitation applied was expanded to include exempt organizations which normally received substantial public support. The Senate Finance Committee cited the beneficial activities carried on by various philanthropic organizations, particularly cultural, educational, and charitable organizations, and emphasized that the extra deduction was intended to encourage receipt of immediately spendable contributions for charitable organizations. S. Rep. No. 830, 88th Cong. 2nd Sess. 58 (1964).

During the 1960's, there was a recognition that in some cases private foundations were subject to abuse, and there was "growing Congressional consciousness of such problems as self dealing, accumulation of resources, and business involvement among a substantial group of private foundations." Troyer, *supra*, at 111. The Treasury testified persuasively that private foundations were being used for self-dealing, "in which foundation assets may be diverted to private advantage;" deferred benefits, in which there was substantial delay between the deduction for the donor and the benefit to the public through charitable expenditures; business involvement, which placed competitors at a disadvantage and created opportunities for self-dealing, while preoccupying foundation managers with business, rather than charitable, activities; as a device to maintain control of a family corporation or other controlled property; unrelated financial transactions, which benefited private individuals and subjected funds to unnecessary risks; and continuation of foundations in perpetuity without objective evaluation by outside interests. Joint Publication, House Committee on Ways & Means and Senate Finance Committee, *Tax Reform Studies and Proposals, U.S. Treasury Dept.*, Feb. 5, 1969, at 296-297. *See also* Treasury testimony, *Senate Finance Committee Hearings*, H.R. 13270, Sept. 4 & 5, 1969, at 725-737; Department of the Treasury, *Report on Private Foundations*, February 2, 1965.

Partly because of the different perceptions of the roles of private and public foundations, the Tax Reform Act of 1969 included a major overhaul of the rules governing charitable contributions; and in response to the abuses to which private foundations had been put, the Act also imposed numerous regulatory measures on private foundations. Section 170* was substantially rewritten. Among the changes in the statute was the classification of organizations as public and private charities. Distinctions between the two involved imposition of (1) a percentage limitation on income to which the charitable deduction applied; (2) special limitations with respect to contributions of certain types of property; and (3) special treatment of carryovers of excess contributions. All three changes provided more favorable rules for contributions to public foundations than for contributions to private foundations. Other measures were enacted to eliminate the abuses to which private foundations had been subject, specifically sections 4940 through 4945. The provisions of the 1969 Act survive today with a few additions and modifications.

II. Deductibility of Charitable Contributions

A. Section 170 of the Internal Revenue Code

Section 170 divides charitable organizations into two groups. The categories in the first group, listed in section 170(b)(1)(A), are the following: (i) churches, (ii) educational institutions, (iii) hospitals or other medical institutions, (iv) organizations receiving substantial public or government support and administering properties for colleges or universities, (v) governmental units, (vi) organizations created for enumerated purposes (religious, charitable, scientific, literary, educational, certain sports and anti-cruelty) and receiving general public or governmental support, (vii) private foundations, which are operating foundations, common funds or conduit foundations meeting certain distributions requirements, and (viii) organizations described in sections 509(a)(2) or 509(a)(3). Although not all of these organizations are strictly public charities, for purposes of this statute they are treated alike and will be referred to hereinafter as "public charities."

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* Unless otherwise indicated, section references are to the Internal Revenue Code of 1954, as amended.

The second category of organizations delineated in section 170 includes any charitable organization not listed in section 170(b)(1)(A), and particularly private foundations. This category will be referred to hereinafter as "private foundations." The legislative history does not provide a rationale for treating private operating foundations differently from other private foundations, but presumably it was felt that incentives were needed for the demands of maintaining a continuing program of activities. See Williams and Moorhead, "An Analysis of the Federal Tax Distinctions Between Public and Private Charitable Foundations," IV U.S. Treasury: Commission on Private Philanthropies and Public Needs 2099, 2111 (1977).

Section 170 distinguishes contributions to the two categories of charities as follows:

(1) Cash Contributions. The aggregate of charitable contributions to public charities may not exceed 50 percent of an individual taxpayer's contribution base, which is defined as adjusted gross income computed without regard to any net operating loss carryback. Section 170(b)(1)(A) and (E). The aggregate of charitable contributions to private foundations can not exceed 20 percent of an individual taxpayer's contribution base. Section 170(b)(1)(B).

(2) Contributions of long-term capital gain property. An individual donor who contributes real property, intangible property, or tangible personal property related to the charity's tax-exempt function to a public charity (a) may deduct the fair market value of the property up to 30 percent of his contribution base reduced by all other charitable contributions for the taxable year; section 170(b)(1)(C)(i) and (ii); or (b) may elect to reduce the amount of the deduction claimed

by 40 percent of any unrealized gain with respect to the property and then apply the 50 percent ceiling. Section 170(b)(1)(C)(iii). If contributed tangible personal property is unrelated to a recipient public charity's exempt function, the donor has no election but is required to reduce the amount of the claimed deduction by 40 percent of the unrealized gain and the 50 percent ceiling applies. Section 170(e)(1)(A)(i).

The allowable deduction for a contribution of long term capital gain property to a private foundation is its fair market value reduced by 40 percent of the unrealized gain (28/46 percent, in the case of a corporation). Section 170(e)(1)(B)(ii).

(3) Ordinary income or short-term capital gain property. The amount of a contribution to either a public charity or a private foundation must be reduced by the amount of ordinary income or short-term capital gain that would have been realized had the property been sold. Section 170(e)(1)(A).

(4) Special rule for gifts of appreciated property to "conduit" foundations. Contributions to certain "conduit" private foundations are deductible in the same manner as contributions to public charities. Section 170(b)(1)(D)(ii) defines a foundation eligible for such special treatment as a private foundation which distributes an amount equal to 100 percent of the contributions it receives not later than the

15th day of the third month after the close of taxable year in which the foundation receives the contributions. In the case of contributions of appreciated property, this exception may pose confusion for a donor as discussed infra.

(5) Carryover allowance. Contributions made to public charities which exceed the 50 percent limitation may be included with the amounts contributed to public charities over the following five years. Section 170(d)(1)(A). Contributions of appreciated property to public charities which exceed the 30 percent limit can also be carried over to the following five years. Section 170(b)(1)(C)(ii). However, neither carryover allowance applies to contributions to private foundations. Section 170(d)(1)(A).

(6) Charitable contributions by corporations. The charitable contributions deduction for corporations is essentially limited to 10 percent of the corporation's taxable income. Except for the requirement for reducing the amount claimed as a deduction for contributions of long-term capital gain property to private foundations, described in section IIA(2) above, the same deduction and carryover rules apply to contributions to public charities and contributions to private foundations.

B. Proposed change to Code section 170

H.R. 3043 (1983), introduced by Representative Barber Conable, would eliminate the tax disincentives for gifts to private foundations. Specificially, it would allow taxpayers to freely choose whether to contribute to a public or private foundation without considering the tax consequences. Differences in percentage limitation on contributions to public foundations and private charities would be eliminated. All cash contributions would be limited to 50 percent of the contribution base. Distinctions in treatment given to donations of appreciated property would be eliminated and donors would have the choice of deducting the value against a reduced limit or reducing the amount of the contribution, as discussed in Part IIA(2) above, without regard to the recipient. Contributions of tangible personal property unrelated to the recipient's function would still have to be reduced by 40 percent of the unrealized gain, but the treatment would be the same for private foundations and public charities. Finally, H.R. 3043 would also change the carryover restrictions to allow taxpayers to carry excess contributions over to the following five years, regardless of whether the contribution was made to a public charity or to a private foundation.

C. Discussion

Eliminating the distinctions between the charitable deduction allowed for gifts to private and public foundations involves a consideration of a number of competing arguments.

1. Complexity of present rules

One argument for equalizing deduction limitations for contributions to private foundations and public charities is that the statute and the regulations thereunder are too complex. Because of this, the American Bar Association Section of Taxation has recommended a uniform 35 percent deduction limitation. In addition to the rules delineated in Part IIA, above, section 170 outlines numerous other restrictions, such as special rules for transfers of partial interests, special rules for charitable trusts and pooled income funds, reductions for liabilities, and different limitations for specified activities, such as qualified conservation contributions. Most of these sections are complex and susceptible to different interpretations.

Exceptions have carved away some of the rules of section 170, making it even more complex. For example: one exception to the rule that the deduction for contributions of appreciated property must be reduced by the amount that would have been ordinary income if the property were sold allows corporate givers of certain inventory-type property donated for the care of the needy, the ill, or infants, to deduct the donor's basis plus one-half of the unrealized appreciation. Section 170(e)(3)(A). The rules for charitable contributions have been further complicated by the above-the-line deduction for charitable contributions allowed to taxpayers who do not itemize their deductions, added by the Economic Recovery Tax Act of 1981. ERTA §121. This provision will be in effect only for 1982 through 1986.

Another problem is that potential contributors cannot easily determine whether the organizations to which they wish to contribute qualify as public charities. The Internal Revenue Service puts out a list, Publication 78, which indicates how a donor may treat his deduction, but this still does not protect the donor if the gift is made to a private foundation after the organization's exempt status is terminated, nor is a substantial contributor protected during the year the status is lost. Section 508(d)(1). Furthermore, the statute does not deal with contributions to a public charity which retroactively loses its exempt status.

Special problems are also created under present law with respect to contributions of appreciated property to private foundations. Contributions to private foundations are limited, under section 170(b)(1)(B), to the lesser of 20 percent of the contribution base or the amount of the 50 percent limitation available after gifts to public charities. This 50 percent amount is computed including gifts of appreciated property, even in excess of the 30 percent limit that applies to them.

The statute also poses a problem to a donor of appreciated property to a private foundation that expects to meet the conduit requirements but later is unable to do so. Appreciated property is valued at the time the donation is made. If the property declines in value between the date of the gift and the date of distribution by the foundation, the distribution requirements will not be met unless the foundation has additional cash to distribute. Because section 170(b)(1)(D)(ii) is an "all or nothing" rule, if the foundation cannot meet the distribution requirement, the donor is limited to the 20 percent deduction and is subject to the contribution reduction rules applicable to gifts of long-term capital gains property.

2. Current Assessments of the Charitable Activities of Private Foundations

Statistics provided by The Foundation Center indicate that there are 22,535 active grantmaking foundations (private foundations whose primary purpose is awarding grants) in the United States. The Foundation Center, Foundations Today at 4 (1982). The grantmaking foundations of which The Foundation Center has records held combined assets of $41.6

billion and awarded grants totalling over $2.8 billion during the 1979-80 fiscal year. 15 percent of the foundations, or 3,368 account for 92 percent of all assets and 82 percent of the grant dollars awarded. The Foundation Center, supra, at 4. Grants for welfare and/or social services comprise the largest percentage of both the number of grants and grant dollars, with education second and cultural activities, an area of growing interest to foundations, third. The Foundation Center, supra, at 14-15.

Current assessments of the way in which private foundations use these resources are not entirely critical. Private foundations have been described by a Presidential Task Force as a "unique and important force in American philanthropy, providing support for research in medical science, agriculture, cultural activities, education, etc." According to this report, the abuses have been regulated, and it is "clear that foundations are and will continue to be operated for the public benefit." The discriminatory rules on charitable deductions "needlessly threaten the ability of foundations to continue as a vital force in American philanthropy." Report on President's Task Force on Private Sector Initiatives, Impediments Committee at 12-14 (1983). Private foundations have also been credited for leadership in the welfare rights movement, growth of minority business enterprise, American Indian rights, and institutional reform, among the areas in which the government cannot become involved. Report of the Commission on Private Philanthropy and Public Needs, Giving In America, (1975) ("Filer Commission Report") at 37. "Public" television owes its development primarily to the fact that it was underwritten by foundations. Council on Foundations, Inc., "Private Foundations and the Tax Reform Act"; III U.S. Treasury: Commission of Private Philanthropies and Public Needs at 1577-1580.

On the other hand, while the works of some foundations stand out as excellent examples of the best philanthropy, some feel that private philanthropy has largely failed to meet the needs of many constituencies in our society such as minority groups and women and has failed to have a substantial impact on the most pressing issues of the day, such as nuclear proliferation and world hunger. See Private Philanthropy: Vital & Innovative? Or Passive and Irrelevant? -- The Donee Group Report to the Filer Commission on Private Philanthropy & Public Needs, 1975, 1,2.

3. Policies Supporting Continued Differentiation between Gifts to Private Foundations and Gifts to Public Charities

Gifts to private foundations are distinguishable from gifts to public charities because donors to a private foundation are generally able to retain control of the transferred property. This has many implications. It may make very difficult, for example, any arm's-length valuation of property contributed to a private foundation. In addition, while the abuses to which private foundations were subject have been curbed by the Tax Reform Act of 1969, in many respects that legislation represented a compromise and it does not always prevent private foundations from being operated for private ends.

The ability to retain control over property or cash contributed to a private foundation may also accelerate tax benefits. For example, if a donor has unusually high income in a particular year and would normally not make charitable contributions equal to half of his adjusted gross income, the donor could contribute the maximum deductible amount (assuming the 50 percent limit were extended to gifts to private foundations) to a private foundation and, through his control of the private foundation, arrange for the use of the private foundation's assets to make charitable gifts in latter years that the donor would otherwise fund out of his direct resources. Use of a private foundation in such a circumstance would permit the donor, in effect, to accelerate the tax benefit of future years' charitable contributions.

In addition, allowing a deduction for the value (rather than basis) of appreciated property is not sound tax policy and by itself this would justify not extending to private foundations the rules that allow a deduction for the value of certain property contributions.

D. Recommendation of the Committee

The Committee recognizes that a significant simplification of existing law would be effected by elimination of the distinctions in section 170 between private foundations and public charities. On the other hand, we are troubled by any extension of the rule that allows a deduction for the value (as opposed to the basis) of appreciation property, and we also believe that the allowance of a current income tax deduction for charitable deductions should be based, at least in part, on a probability of a current charitable benefit to charitable beneficiaries. In the view of the Committee, the undesirability of allowing a deduction for the value (as opposed to the basis) of appreciated property contributed to a private foundation and the potential ability of a donor to a private foundation to retain control over disposition of the contributed property and, thereby, defer the realization of charitable benefits while accelerating the donor's receipt of income tax benefits are decisive; and it, therefore, recommends the retention of the 20 percent limitation and the more restrictive rules on deductibility of gifts of appreciated property applicable to private foundations. If the foregoing recommendation is followed, the Committee would also recommend retention of the present carryover rules. Allowance of a separate carryover, subject to a separate 20 percent limitation, for gifts to private foundations would create additional complexity while benefiting relatively few taxpayers.

III. The public support tests

Distinctions between charitable organizations strictly on the basis of the public or private nature of their financial support first entered the Internal Revenue Code with the enactment of section 170(b)(1)(A)(vi) in 1964. The effect of section 170(b)(1)(A)(vi) is to equate any organization "which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis of its exemption under section 501(a)) from a governmental unit ... or from direct or indirect contributions" with other organizations previously distinguished as favored donees because of the functions they performed. Those other kinds of organizations were churches and conventions and associations of churches, schools, hospitals, medical research or education organizations, public higher education support organizations, and states and political subdivisions. Section

170(b)(1)(A)(i)-(v). The distinction formed the basis for the applicability of the 20 percent or 30 percent contribution limitation of section 170.

Under present law publicly supported organizations and those in the functional categories described above are still favored under section 170(b) because contributions to such organizations are generally eligible for the 50 percent limitation. Of equal importance, with the Tax Reform Act of 1969 the public support tests became the basic determinant of private foundation status.

The public support requirements are set forth in section 509(a)(1) (which refers to section 170(b)(1)(A) (other than clauses (vii) and (viii)) and 509(a)(2). Under section 170(b)(1)(A)(iv) a charity must normally receive a substantial part of its support (exclusive of income received in the performance of its exempt functions) from a governmental unit or from direct or indirect contributions from the general public. The Internal Revenue Service has provided in regulations that an organization will be treated as a "publicly supported" organization if the total amount of support which the organization "normally" receives from governmental units, from contributions made directly or indirectly by the general public, or from a combination thereof, equals at least 33 1/3 percent of the total support "normally" received by the organization. Treas. Reg. §1.170A-9(e)(2). Where an organization fails the

33 1/3 percent of support test, it will be treated as publicly supported if it receives more than 10 percent of its total support from governmental units and contributions from the public and the organization is organized and operated to attract new and additional public or governmental support on a continuous basis. Treas. Reg. §1.170A-9(e)(3)(i) and (ii). Under the 33 1/3 percent and 10 percent public support tests, amounts received from all persons, including substantial contributors, are included as public support to the extent they do not exceed 2 percent of total support. (For this purpose, contributions from certain persons are aggregated.)

Under section 509(a)(2) the organization must (A) normally receive from persons other than disqualified persons with respect to the organization, from certain governmental units or from certain public charities more than one third of its support in each taxable year from (i) gifts, grants, contributions or membership fees and (ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business, not including such receipts from any person or agency of a governmental unit in any taxable year to the extent such receipts exceed the greater of $5,000 or 1 percent of the organization's support in such taxable year and (B) normally receive not more than one-third of its support in each taxable year from the sum of (i) gross investment income and (ii) the excess (if any) of the income of its unrelated business taxable income over the tax imposed thereon.

While the 10 percent public support test under Treas. Reg. §170A-9(e)(3)(i) appears to be a flexible one, it nonetheless inappropriately throws some organizations into private foundation status. It is possible for an organization to raise an endowment from public contributions and then lose its public charity status when that endowment becomes its principal source of support. It seems unlikely that Congress intended such an organization to be subject to the private foundation taxes particularly if it were performing a public function. In continuing to classify schools and hospitals as favored organizations for purposes of section 170 and section 509, Congress has recognized that certain types of organizations are by their nature public organizations that serve a direct public purpose. H.R. 2183, which would add public museums and free public libraries to section 170(b)(1)(A), indicates an awareness that other organizations may also exercise a public function but not qualify as public charities. A legislative solution is desirable and we recommend that the Code be amended to provide for the 33 1/3 percent of support test or a pure facts and circumstances public support test with respect to organizations whose activities are directed at the general public.

With respect to the requirements under section 509(a)(2), we recommend that (1) the limitation on gross investment income be increased to 50 percent, (2) gifts and grants from disqualified persons, including substantial contributors, up to a specified amount (e.g. the greater of $25,000 or 2 percent of the organization's support) be considered in determining whether the organization is publicly supported, (3) the limitation on receipts from governmental units be increased to the greater of $25,000 or 2 percent of the organization's support, and (4) the distinction between grants and gross receipts from governmental units be specified in the Code.

The gross investment income limitation of 33 1/3 percent operates to cause what are essentially public charities to be classified as private foundations because they have been heavily endowed. Heavily endowed foundations such as museums must compete for contributions with less prominent organizations, not necessarily because they have an equal need for the funds but in order to maintain their public charity status. The increase in this limitation would reduce this unnecessary competition.

The exclusion from the public support base of all contributions by disqualified persons, including substantial contributors, seems unjustified and inconsistent with section 170(b)(A)(iv). As discussed below, it is relatively easy for a person to become a substantial contributor with respect to an organization, especially in its early years of formation; and the substantial contributor taint is never lost. We recommend that gifts and grants from substantial contributors up to a specified amount of the greater of $25,000 or 2 percent of the organization's support be included in the public support base in determining whether an organization is publicly supported under section 509(a)(2). The limits on governmental receipts should be increased to the greater of $25,000 or 2 percent of the organization's support.

There continues to be confusion about the distinction between governmental payments that are grants and those that are related to the organization's exempt function. The formulation in Treas. Reg. §1.170A-9(e)(8)(ii) that a governmental payment to enable an organization to provide a service to, or maintain a facility for the direct benefit of the public is a grant, does not clearly address the issue that many medical care providers face when most of their support comes from governmental payments for individual patients. Moreover, the distinction between "direct benefit of the public" and "direct and immediate needs of the government" is at best a fine one. A legislative definition of the distinction or the addition of examples to the Treasury regulations that include the kinds of governmental payments currently most prevalent would be helpful.

IV. Disqualified Persons - Self-Dealing

The definition of a disqualified person is important for a number of reasons, including that self-dealing transactions between disqualified persons and private foundations may trigger substantial penalty taxes. The Committee approves of the self-dealing penalties with respect to transactions between disqualified persons and private foundations, as provided in section 4941, and believes that they should be maintained. However, while the statutory definition of disqualified persons in section 4946 of the Code has, as amplified and modified by the regulations, resulted in a workable term, it could be improved.

First, persons who are disqualified persons by reason of being foundation managers or family members of foundation managers, cease to be so when the foundation manager terminates his office. However, a person who is a disqualified person because he is a "substantial contributor" (as defined in section 507(d)(2)) or a member of the family of a substantial contributor never ceases to be a disqualified person. Even the death of the substantial contributor will apparently not eliminate the taint for members of the family.

It has been recognized that while the rule defining a substantial contributor may be appropriate for purposes of applying the termination rules in section 507, it is not necessarily so for determining status as a disqualified person for purposes of section 4941. Treas. Reg. §1.507-6(a)(2) provides that for purposes of section 4941 only, a substantial contributor does not include any section 501(c)(3) charity. If the substantial contributor did not contribute a very large portion of total contributions (e.g. 25%), we suggest that for all purposes other than section 507, treatment as a disqualified person by reason of being a substantial contributor or a member of the family of a substantial contributor be determined by reference to a moving period (for example, the current year and the immediate preceding 10, or 15, years). That is, the classification as a substantial contributor (and therefore as a disqualified person) should cease after some fixed period of time following the initial classification unless the person makes further contributions or has accounted for a major part of total contributions.

Second, section 507(d)(2) provides, for purposes of applying the termination rules in section 507, that a person who contributed $5,000 or more to a private foundation will be a substantial contributor for the year of contribution and all subsequent years if such amount was more than 2 percent of the total contributions received by the foundation throughout its existence before the close of the taxable year of the foundation in which such contribution is received. A special transition rule, applicable to foundations in existence on October 9, 1969, treated all pre-October 9, 1969 contributions as made on October 9, 1969. The transition rule had the effect of eliminating from the definition of substantial contributor persons who had made relatively modest contributions in the early years of a foundation's existence; and the general approach of comparing a person's contributions to the aggregate contributions received by a foundation throughout its existence would similarly exclude modest contributors to established foundations. If our first recommendation is not accepted, we recommend that consideration be given to developing a similar cumulative contributions rule under section 4946 for determining whether a person should be a disqualified person by reason of being treated as a substantial contributor. Furthermore, with inflation the dollar amount should be increased from $5,000 to $25,000. Another alternative would be to apply a cumulative contributions test at the time of the death of a substantial contributor to see whether family members of a substantial contributor should continue to be treated as disqualified persons after the death of the actual substantial contributor.

Third, the $15,000 compensation threshold for determining whether a government employee is a "government official" as defined in section 4946(c)(4) and (5), while appropriate in 1969, might be too low a number in 1983. We suggest that consideration be given to either raising the amount or providing for automatic adjustment to this amount.

V. Excess Business Holdings

A. Background

The Tax Reform Act of 1969 imposed excise taxes on private foundations owning interests in incorporated and unincorporated businesses in excess of certain amounts. The reason for this legislation was the Congressional determination that "The use of foundations to maintain control of businesses appears to be increasing" and that "where the charitable ownership predominates, the business may be run in a way which unfairly competes with other businesses whose owners must pay taxes on the income that they derive from the businesses." S. Rep. No. 91-552, 91st Cong. 1st Sess., pp. 38-39 (1969).

Basically, the maximum permitted holding by a private foundation in an incorporated business enterprise is 20 percent of the voting stock reduced by the holdings of disqualified persons with respect to the foundation. (If effective control is held by persons other than disqualified persons, the permitted percentage is 35 percent). If all disqualified persons do not own more than 20 percent of the voting stock, nonvoting stock held by a foundation is a permitted holding. A foundation may hold at least 2 percent of the voting stock and 2 percent, by value, of the total stock without regard to the amount held by disqualified persons. In the case of partnerships, the test is based on the percentage of interests in profits. No interest in a proprietorship, including an unrelated business, is permitted.

Foundations which received holdings by gift after May 26, 1969, the effective date of this part of the the Tax Reform Act of 1969, have five years in which to dispose of the portion in excess of the limit before they become taxable. Any interest which the foundation purchases, directly or indirectly, is taxable immediately if it exceeds the limit.

Foundations with interests in "excess" of the limits as of May 26, 1969 were given a multi-phase system under which they could bring their holdings within the limits. Foundations had a first phase to reduce their holdings to 50 percent where disqualified persons held more than 2 percent. The number of years allowed for the first phase depended on the size of the interest in the business which the foundation held on the effective date (i.e., 20 years for foundations owning more than 95 percent of the voting stock, 15 years if the foundation and its disqualified persons own more than 75 percent of the voting stock, and 10 years for all other situations). They then had a second phase of 15 years during which they were to reduce to 35 percent if disqualified persons continued to hold more than 2 percent. These periods were tolled during the pendency of litigation undertaken in order to reform the foundation's governing instrument so that it could comply.

In addition to "excess" interests actually held on the effective date, certain other interests were deemed to have been held on the effective date and thus to qualify for 15- and 10-year disposition periods. These were interests which a foundation received under a trust which was irrevocable on May 26, 1969 or under a will in existence on that date and unchanged in this respect prior to the testator's death.

Under these rules, private foundations with interests on the effective date which did not exceed 75 percent of the voting stock (including stock held by disqualified persons) reached the end of the first phase by June 1979. Other foundations have until June 1984 (15 years) or June 1989 (20 years). The disposition periods (15 and 10 years) will not have commenced for interests yet to be received under qualifying trusts and wills.

B. Subsequent Developments

In some cases, compliance with the excess business holdings rules has been achieved through the sale of the excess interests to third parties, both taxable and tax-exempt. In other cases, the excess interests have been contributed to universities and other charitable organizations which are not subject to the rules.

A number of proposals to relax the disposition periods have recently received some congressional support. For example, during the consideration of the Tax Equity and Fiscal Responsibility Tax Act of 1982 the following proposals were approved by the Senate (but deleted in conference):

1. To permanently exempt from the excess business holdings rules --

   - a private foundation owning 100 percent of the voting stock of a hotel (El Pomar Foundation, owner of the Broadmoor Hotel, Colorado Springs, Colorado (S. Rep. No. 97-494, 97th Cong., 2d Sess., p. 400 (1982))).

   - a private foundation owning 100 percent of the stock of a newspaper publishing company (Houston Endowment, owner of the Houston Chronicle Publishing Company (S. Rep. No. 97-494, above, p. 401)).

   - a private foundation owning 100 percent of the stock of three newspaper publishing companies (Public Welfare Foundation, owner of newspapers in Spartanburg, Gadsden and Tuscaloosa (Cong. Rec. S8970, July 22, 1982)).

   - a home for orphans and other disadvantaged persons (Sand Springs House, which owns certain businesses in Sand Springs, Oklahoma (Cong. Rec. S8917, July 22, 1982)).

- a private foundation which is a bank holding company (Otto Bremer Foundation, owner of 29 banks and 39 other corporations in Minnesota, Wisconsin, and North Dakota (Cong. Rec. S8918, July 22, 1982)).
- a trust which owns 100 percent of the stock of a newspaper publishing company (New London Day Trust, owner of the New London Day in New London, Connecticut (Cong. Rec. S8918, July 22, 1982)).

2. To provide a five-year extension of the 15-year disposition period --

- a private foundation owning a number of savings and loan associations in the West (Ahmanson Foundation, owner of Home Savings of America (Cong. Rec. S9012, July 22, 1982)).

In addition, the MacArthur Foundation will reach the end of its five-year disposition period on November 30, 1983 for its 100 percent interest in Bankers Life and Casualty Company and is seeking legislation, introduced as S. 562, which would permit administrative extensions of the disposition periods in cases meriting additional time. Since the MacArthur Foundation received its holdings by gift after 1969, it is eligible only for a five-year disposition period.

S. 562 provides that in granting or denying a request for an extension, the Secretary would consider: (1)

whether the private foundation has in good faith taken reasonable steps to dispose of such holdings throughout the initial period; (2) whether orderly disposition of such holdings can reasonably be expected to occur before the expiration of the extension period; and (3) all other facts and circumstances which the Secretary considers relevant. The Treasury opposes the bill as currently drafted. The Treasury has stated that it favors extensions but only if certain specific criteria are satisfied, including findings by the Secretary that: (1) diligent efforts to dispose of the holdings were made throughout the initial five-year period; (2) disposition within the initial five-year period is not possible, except at a price substantially below current fair market value, because of the existence of one or more specified factors; (3) the foundation has submitted a realistic plan to dispose of the holdings within the extension period; and (4) each State Attorney General (or other State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings has reviewed the plan for disposition and does not object to it. BNA Daily Report for Executives No. 110, p. J-3 (June 7, 1983).

These proposals provide an opportunity for a reappraisal of the original legislation and a review of its current effect.

C. Discussion and Recommendations

1. The Committee supports the requirement of Section 4943 that private foundations be required over time to dispose of their excess business holdings. The policy of the excess business holdings provisions is sound to the extent that it ensures that a private foundation will not be used to maintain long-term control over a business enterprise, as well as contributing to the diversification of charitable investments and thus to the financial strength of foundations. The important question, however, is how to secure substantial growth in the charitable sector by encouraging charitable contributions of assets as substantial as those of the MacArthur Foundation and managing the conversion of those assets to a diversified portfolio.

2. While we have not considered the merits of the different exemptions proposed to Congress, we believe that the enactment of these exemptions would set an unwise precedent and needlessly involve Congress in individualized administration of the private foundation rules. We have also concluded, however, that the five year disposition rule applicable to post-1969 gifts and bequests is too short and we recommend its extension to 10 years.

The five year period does not take into account difficulties in dealing with "jumbo" corporations, such as those presented by the MacArthur, Ahmanson and Bremer situations. What has apparently triggered a sympathetic legislative response is the size, complexity and degree of government control of the business interests held by these foundations. Although testators and donors are on notice with respect to the five-year period, it is nonetheless in strong contrast with the lengthy multi-phase periods provided to foundations with May 6, 1969 excess holdings. Five years may be sufficient for some but not for all.

3. It is clear from the proposals for exemption from excess business holdings rules that many private foundations are having difficulty in disposing of, or reducing, their business holdings even within a 10 year period. In addition to extending the 5 year disposition rule to 10 years, we would also recommend legislation that would authorize an administrative procedure for extending the fixed disposition periods under conditions designed to ensure that the excess business holdings requirement will be satisfied in a reasonable period of time. This exemptive procedure should be administered in the National Office of the Internal Revenue Service, as opposed to the field office administration of exempt status determination letters; and the statute should set a maximum limit on the extension period. The availability of an extension should be based on a satisfactory showing of the difficulties of complying with the fixed time limit. On

balance we support the Treasury's view as to how such legislation should be drafted, rather than S.562. While State Attorney General participation in the process may be useful, however, such participation cannot be mandatory since a number of State Attorney General offices have little or no staff for supervising charitable organizations.

VI. Taxable Expenditures

The Tax Reform Act of 1969 imposed many restrictions on the activities of private foundations. Specifically, section 4945 prohibits private foundations from (i) carrying on lobbying activities and (ii) making expenditures for any noncharitable purpose. In addition, section 4945 substantially limits the ability of private foundations (i) to make grants for or to conduct directly certain "political" activities, (ii) to make certain grants to individuals and (iii) to make grants to non-public charities.* Any amount paid or incurred by a private foundation for any of these activities is a "taxable expenditure" subject to the excise tax imposed by section 4945(a) and (b). There is a wide divergence of views on the taxable expenditure provisions of section 4945. While some recommend that the law be amended to eliminate the expenditure responsibility requirements of section 4945, see Private Philanthropy: Vital & Innovative? Or Passive and Irrelevant?, *supra*, at 23-24, the Assistant Secretary of the Treasury for Tax Policy has stated that specific problems encountered in complying with expenditure responsibility would be better solved administratively or through legislation rather than by any blanket exemption from expenditure responsibility. Statements by Assistant Treasury Secretary John E. Chapoton, Daily Tax Report (BNA) No. 124 at J-38,39 (6-27-83). The provisions of section 4945, their impact on the grant-making activities of private foundations, and recommendations for change in the law are discussed below.

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* As organizations described in section 501(c)(3), private foundations are subject to the general proscriptions of that section to the effect that no substantial part of the activities of such organizations may constitute carrying on propaganda, or otherwise attempting to influence legislation and that such organizations must not participate or intervene in any political campaign on behalf of any candidate for public office. The effect of section 4945 is to prohibit any such activity.

A. Lobbying Activities

Any amount paid or incurred by a private foundation "to carry on propaganda, or otherwise to attempt to influence legislation" is a taxable expenditure. Section 4945(d)(1). While the statute contains certain specific exceptions to the definition of lobbying activities, it fails to address the critical issue of grants by a private foundation to public charities which engage in lobbying activities.

The regulations under section 4945(d) provide that a grant by a private foundation to a public charity is not a taxable expenditure if the grant is not "earmarked" to be used for any prohibited activity and there is no "agreement, oral or written" whereby the grantor foundation may cause the grantee to engage in any prohibited activity or to select the recipient to which a grant is to be devoted. Treas. Reg. §§53.4945-2(a)(5)(i). The regulations illustrate the application of the rules relating to earmarked grants with two examples, one of which implicitly requires the grantor foundation to monitor the extent of the grantee charity's lobbying activities.

The regulations do not address the issue of whether grants by a private foundation to a public charity, which makes the election under section 501(h) to have a quantitative limitation (expressed as a percentage of total expenditures) apply to its lobbying activities, may violate the proscriptions on lobbying expenditures by the grantor foundation. In 1978, the Internal Revenue Service issued Letter Ruling 7810041 in response to a request for a ruling regarding the question of the ability of a private foundation to make grants to public charities which have made the election (or plan to make the election) under section 501(h). The ruling submitted to the Internal Revenue Service requested an official statement of the Internal Revenue Service's position with respect to the following five enumerated grant patterns:

1. Requests for general support grants from public charities, which have been or are currently involved in attempts to influence legislation carried on within the limits permitted by section 501(c)(3).
2. Requests for general support grants from public charities which have advised the foundation that they have elected or will elect to be subject to sections 501(h) and 4911.
3. Requests for general support grants described in 2 above, whose budgets for the year disclose amounts allocated for attempts to influence legislation.
4. Requests by public charities for specific project grants, the descriptions of which do not refer to attempts to influence legislation. However, the organizations involved have previously made such attempts or are currently engaged in them, and have elected or will elect to be subject to the new lobbying provisions.
5. Requests by public charities for partial funding of specific projects that disclose amounts allocated for attempts to influence legislation. However, it is clear from grant proposals that the

> relative amounts of the requested grant and the budgeted lobbying expenses are such that grants by private foundations can be spent entirely for non-lobbying expenses.

The Internal Revenue Service held that grants awarded pursuant to the above would not constitute taxable expenditures under section 4945 absent an oral or written agreement, under which the private foundation can direct the use of the grant or the grantee's funds for purposes described in section 4945(d)(1), i.e., attempts to influence legislation. However, the letter ruling did not deal with a grant made by a private foundation to a public charity for a specific project and the grant from the foundation exceeds the non-lobbying portion of the project so that some of the private foundation's monies must go for lobbying. The implication of the letter ruling is that this amount would be a "taxable expenditure."

Although the letter ruling is relied upon by foundation grantmakers, it is, of course, of no precedential value. In light of the expansive view which the Internal Revenue Service is taking with respect to what activities constitute lobbying (see, e.g., Ltr. 8115024), we recommended that the holding of Letter Ruling 7810041 be set out in a ruling or regulation so that private foundations will have guidelines on which they can rely in making grants to public charities which engage in lobbying.

B. Political Activities

Any amount paid or incurred by a private foundation to influence the outcome of any specific public election or to carry on, directly or indirectly, a voter registration drive, is a taxable expenditure unless such amount is paid or incurred by an organization meeting certain requirements specified in section 4945(f). Section 4945(d)(2). A section 4945(f) organization is an organization described in section 501(c)(3) and exempt from Federal income tax under section 501(a) if

1. The activities of the organization are nonpartisan, are not confined to one specific election period and are carried on in five or more states.

2. At least 85 percent of the organization's income is spent directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated.

3. At least 85 percent of the organization's support (other than gross investment income) is derived from exempt organizations, the general public, governmental units, or any combination of the foregoing, the organization does not receive more than 25 percent of its support (other than

gross investment income) from any one exempt organization, and not more than half of the support of the organization is received from gross investment income.

4. Contributions to the organization for voter registration drives are not subject to conditions that they may be used only in specified states, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or the District of Columbia, or that they may be used in only one specific election period. Section 4945(f) and Treas. Reg. §53.4945-3(b)(1).

The regulations under section 4945(f) provide for an advance ruling procedure for an organization to obtain section 4945(f) status. In addition, the regulations provide that if a private foundation makes a grant to an organization described in section 4945(f), the grant will not be treated as a taxable expenditure irrespective of whether the grantee is a private foundation. Further, the regulations provide that a non-earmarked grant to a public charity which is not an organization described in section 4945(f), and which subsequently engages in voter registration activities, is not a taxable expenditure provided that the grant is not earmarked for voter registration activities. Treas. Reg. §53.4945-3 and -2(a)(5).

The restrictions on grants by private foundations to public charities which engage in voter registration activities appear to be unduly burdensome. Because all public charities are subject to the constraint of section 501(c)(3) that such organizations must not "participate in, or intervene in . . . any political campaign on behalf of any candidate for public office," voter registration activities of a public charity must be nonpartisan or the organization will jeopardize its tax exempt status. In addition, most public charities must satisfy the requirements of section 509 to demonstrate public support (expressed either as a percentage of revenue or by virtue of the relationship of the organization to another publicly supported organization). Thus, the requirements of section 4945(f) as applied to public charities are duplicative and should be modified to provide that a grant by a private foundation to a public charity which engages in voter registration activity will be presumed not to violate section 4945(d)(2). Such a presumption may be rebutted if it is demonstrated that the voter registration activities are not being conducted in a nonpartisan manner. Voter registration activities might be considered partisan if the activities are confined to one specific election period, the activities are carried on in fewer than five states, and the grantee organization receives more than a fixed percentage (e.g., 25 percent) of its support from any one private foundation. None of these factors will by itself conclusively demonstrate that the voter registration activities were partisan.

With respect to grants to other private foundations which carry on voter registration activities, the provisions of section 4945(f) should be retained so that a grantor foundation may make a grant to another private foundation which satisfies the requirements of section 4945(f) without violating section 4945(d)(4) (the "expenditure responsibility" requirement discussed below).

C. Grants to Individuals

A grant to an individual for travel, study or other similar purposes by such individual is a taxable expenditure unless the individual grant is awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Internal Revenue Service. Section 4945(d)(3). While section 4945 uses the term "grant", the regulations define "grants" to include educational loans. Treas. Reg. §53.4945-4(a)(2).

There will be no taxable expenditure if it demonstrated to the satisfaction of the Internal Revenue Service that:

1. The grant constitutes a scholarship or fellowship subject to the provisions of section 117(a) to be used for study at certain educational institutions;

2. The grant constitutes a prize or award subject

to the provisions of section 74(b), if the recipient of the prize or award is selected from the general public; or

3. The purpose of the grant is to achieve a specific objective, produce a report, or other similar project, or improve or enhance a literary, artistic, musical, scientific, teaching or other similar capability, skill or talent of the grantee. Section 4945(g).

The regulations provide that a grant to an individual for purposes other than those described in section 4945(d)(3) is not a taxable expenditure. As an example, the regulations state that grants to indigent individuals to enable them to purchase furniture are not taxable expenditures, even if no advance ruling from the Internal Revenue Service is obtained. Treas. Reg. §53.4945-4(a)(3).

There is considerable uncertainty with respect to the specific types of grants to individuals which are subject to the advance approval requirement. For example, a grant to an individual to produce an educational film on the history of the nuclear arms race is ostensibly not subject to the advance approval requirements but, a prudent foundation manager would have to seek advance approval of the grant from the Internal Revenue Service to preclude the possibility that, upon audit, the grant will be determined to be a grant to an individual and hence a taxable expenditure.

Obtaining advance approval of the Internal Revenue Service may, at least initially, be an expensive and time consuming procedure and, therefore, certain potential grants to individuals may not be economically feasible for a foundation.

Accordingly, we recommend that (i) the types of grants to individuals subject to the advance approval requirement be clarified (so that the grants to individuals which are not subject to advance approval are more readily identifiable) and (ii) a safe harbor exception to the advance approval procedure should be considered (e.g., grants to individuals in an aggregate amount of $25,000 or less [subject to a cap of not more than $5,000 per individual per project or time period] would only be subject to certain expenditure responsibility requirements and not the advance approval requirements).

D. Grants to Public Charities

Any grant to an organization, other than a public charity, will be a taxable expenditure unless the private foundation exercises expenditure responsibility with respect to the grant. Section 4945(d)(4) and (h). However, the Treasury regulations under sections 170 and 509 (relating to the definition of public charities) provide that a private foundation may not rely upon a ruling from the Internal Revenue Service as to a grantee organization's public charity status if the foundation "was responsible for or was aware of" substantial and material change in support of the grantee which results in the loss of such organization's classification as a publicly supported organization. This forces foundations to conduct an independent investigation of the grantee's sources of financial support to determine whether the grant will cause the grantee to lose its public status. Legislation has been proposed which provides that a foundation, in making a grant to a public charity, may rely upon the grantee's determination letter from the Internal Revenue Service, even if such grant ultimately "tips" the grantee out of public charity status. H.R. 3043 §2(b). The Committee supports enactment of such a measure.

In addition, the Committee believes the expenditure responsibility rules discourage private foundations from making grants to worthwhile charitable or educational projects which do not have public charity status. As a practical matter, many smaller or medium sized private foundations will not make grants with respect to which they must exercise expenditure responsibility. Accordingly, to facilitate the making of small grants to organizations or projects which do not have public charity status, legislation has been proposed which would exempt from the expenditure responsibility requirements certain small grants. H.R. 3043 §2(c). Under the proposed statutory scheme, if the total grants by a private foundation, and all related foundations, to a single grantee do not exceed $15,000, the expenditure responsibility requirements will not apply.* We recommend enactment of this provision with a low limit on the number of such grants per year.

Current Treasury regulations provide that a grant which is subject to the expenditure responsibility requirements will be a taxable expenditure if the grantor (i) fails to make a pre-grant inquiry, (ii) fails to make the grant in accordance with procedures set forth in the regulations or (iii) fails to report the grant to the Internal Revenue Service in accordance with procedures set forth in the regulations. Treas. Reg. §53.4945-5(e)(3). The per se application of these rules can result in a grant being deemed to be a taxable expenditure despite a good faith attempt at complying with the expenditure responsibility rules. Accordingly, we recommend that a grant will not be deemed to be a taxable expenditure even if all of the detailed expenditure responsibility requirements are not specifically followed so long as there is substantial compliance with the expenditure responsibility rules.

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* General Internal Revenue Service requirements relating to grants to non-exempt entities must continue to be followed. See Rev. Rul. 68-489 1968-2 C.B. 210.

Finally, the Internal Revenue Service has adopted a very strict position relating to the timely reporting of expenditure responsibility grants. Thus, for example, in Rev. Rul. 77-213, 1977-1 C.B. 357, a foundation made an expenditure responsibility grant but failed to include it on its annual information return in the list of grants made during that year. The foundation subsequently discovered the error and filed an amended return listing the grant. The Internal Revenue Service ruled that the failure to comply with the reporting requirement caused the grant to be a taxable expenditure. Proposed legislation would eliminate this harsh result by giving the Secretary of the Treasury authority to abate the first level penalty taxes in cases in which it is determined that the violation of the private foundation rules was due to a good faith error or omission and was corrected within the statutory correction period. H.R. 3043 §2(d). We support enactment of this measure.

VII. Miscellaneous

(a) Foreign private foundations are subject to a 4 percent tax on gross investment income derived from sources within the United States. Section 4948(a). The corresponding tax on domestic private foundations was reduced from 4 percent to 2 percent of net investment income in 1977. P.L. 95-600, §520(a), amending section 4940(a). There appears to be no justification for the distinction between tax rates imposed on domestic and foreign private foundations. It is suggested, therefore, that section 4948(a) be amended to reduce the tax from 4 percent of gross investment income to 2 percent of net investment income.

(b) The Committee supports continuation of taxes on failure to distribute income as imposed by section 4942. This provision helps to ensure that some amount of each private foundation's holdings inures to the public benefit every year.

STATE UNIVERSITY OF NEW YORK,
DOWNSTATE MEDICAL CENTER,
Brooklyn, N.Y., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I write with regard to the hearings to be held by the Subcommittee on Oversight of the Committee on Ways and Means with regard to foundations. I write on behalf of an organization that has been the beneficiary of numerous foundation grants, but it is to one in particular that I wish to draw your attention.

The Downstate Medical Center is a campus of the State University of New York located in Brooklyn, New York. Brooklyn is a borough of the City of New York with a population of 2.2 million people, a disproportionate share of whom are of low income, elderly, and of various religious ethnic and racial minorities. The Medical Center was ill-prepared for the world of the 1980's, and for serving its community, by educating health care professionals trained for the medical care delivery system of the future. In recognition of these problems and of the special populations served by this Medical Center, the Commonwealth Fund provided initial funding in the amount of $150,000 (over an eighteen month period) to initiate long term planning for the future of the Medical Center as an urban academic health center.

Our planning has led us to formulate a new design for the collaboration of a medical school and University Hospital with its allied municipal hospital (Kings County Hospital) on the one hand, and with its affiliated voluntary hospitals on the other. Thus our plans for the future will help to mesh public and private sectors to the benefit, we hope, of the entire borough of Brooklyn and of the City and State of New York. With out plan now devised, we have begun to move toward implementation, for which purpose we will again seek foundation support to supplement State funding. Without foundation support, the planning process would not have been possible to initiate nor will the implementation be fully feasible. With that support, we believe we are embarked on a new road that helps define the purpose and the role of the urban academic health center. Surely in this instance social responsibility has been served by the link of private foundation money with a public institution.

I would be grateful if this letter could be made an official part of the hearings record.

Sincerely,

DONALD J. SCHERL, M.D., *President*

NEW YORK UNIVERSITY,
GRADUATE SCHOOL OF PUBLIC ADMINISTRATION,
New York, N.Y, June 20, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON, I am writing to provide the Subcommittee on Oversight with some information what should prove helpful in connection with its hearing on foundations scheduled for June 27 and 28, 1983. I would like this letter to be made an official part of the hearings record. In addition, I want to express my support for H.R. 3043.

Foundation support has been crucial to me in the conduct of several research and policy analysis projects that are at the core of my professional activities. Two recent such projects are especially notable.

First, the Commonwealth Fund has awarded New York University a three-year grant to develop and produce an annual report on the financial conditions of voluntary hospitals in New York City. This report will assemble data not otherwise available on the financial performance of these institutes and will prove useful to hospital managers, trustees, and state and local officials in considering ways to enhance the financial viability of voluntary hospitals.

Second, a group of foundations—Charles H. Revson Foundation, Robert Sterling Clark Foundation, New York Community Trust, Robert Wood Johnson Foundation, Ford Foundation, and Russel Sage Foundation—have provided support over the past five years for the Setting Municipal Priorities Project which I co-direct with Professor Raymond D. Horton of Columbia University. The foundation support has been crucial in bringing together Columbia and New York Universities on this project. The effort has produced five annual volumes containing independent analysis of policy issues confronting the City of New York. The books and conferences made possible by foundation support have drawn attention to important local policy issues and have identified promising policy options for dealing with such problems.

In brief, thanks to the support of private foundations I have had the opportunity to undertake activities that the City of New York and major voluntary institutions in the city could not themselves organize or fund, but which have been and will be important to the city's future. For these reasons I think we all should be proud of the performance of these foundations and take action to facilitate their continued operations.

One such measure is H.R. 3043. While I am not a lawyer or tax expert, the bill's provisions to remove disincentives for contributions to foundations seem highly desirable to me. I hope the Subcommittee, the Committee on Ways and Means, and the entire Congress will support it.

Thank you for your consideration.

Sincerely,

CHARLES BRECHER, *Associate Professor.*

NEW YORK ZOOLOGICAL SOCIETY,
Bronx, N.Y., June 16, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing on behalf of the New York Zoological Society in support of the work of the foundation community, and the passage of H.R. 3043 legislation. Foundation support has been invaluable in virtually every aspect of the work of the New York Zoological Society over the years, allowing us to produce results we would have been unable to attain without foundation support.

Perhaps the best example of positive results from foundation funding is that such support has enabled our Education Department to design dozens of new programs, some of which are being used around the world. For example in 1978, the Charles E. Culpeper Foundation awarded us a grant of $75,000 to develop Windows on Wildlife (WOW), an interdisciplinary education enrichment program for grades three through six. The Foundation awarded an additional $88,000 in 1979, and a final grant of $52,716 in 1980, which covered start-up and development costs for the project. The program was awarded an American Association of Zoological Parks and Aquariums award for excellence in education in 1979. WOW reaches about 2,800 school children per year in the greater New York area and has been taught to over 10,000 children. The project is now entirely self-supporting.

A further example, which grew out of our experience with WOW, is Wildlife Inquiry through Zoo Education (WIZE), a national life science curriculum supplement designed by the Bronx Zoo in conjunction with the Philadelphia, Topeka and Riverbanks (Columbia, South Carolina) zoos. WIZE grew out of requests from around the country after WOW was presented to the national zoo community. Development of the WIZE prototype is a 42-month project, scheduled to run from May 1981 through October 1984.

Major funding for the project (total direct cost $480,407), was provided by the Naional Science Foundation (NSF) in two grants totaling $328,406. Additional funding was provided by private foundations in the following amounts: $10,000 each from the Charles E. Culpeper and Sidney, Milton and Leoma Simon Foundations, and $45,000 from the Geraldine R. Dodge Foundation. A proposal is pending at the Pew Memorial Trust for the remaining $87,000.

The construction of the new Children's Zoo, which opened in 1981, was made possible through the support of six foundations, with grants totalling $1,005,000 (Louis Calder $100,000; Kresge $300,000; Charles Hayden $500,000; William Randolph Hearst $35,000; Surdna $50,000; Foundation for the Needs of Others $20,000) and other contributions totalling $350,000.

This innovative exhibit integrated concepts of ecology and adaptive biology with new techniques in exhibition and program instruction, concentrating the programmatic goals and exhibition expertise of the Zoological Society into a single teaching exhibition.

In the two years since the new Children's Zoo opended, attendance has increased 150 percent over that of the old Children's Zoo, to 522,000 vistors. Its design has been utilized in zoos in ten United States cities, providing an important glimpse of the natural world to thousands of children throughout the country. In addition, the Children's Zoo, which is now entirely self supporting, makes a significant financial contribution to the Education Department.

Another example of results we would not have been able to obtain without foundation support is a direct-mail campaign jointly supported in 1979 by the Robert Sterling Clark and Vincent Astor Foundations. The foundations underwrote a $40,000 camaign to raise unrestricted funds toward reducing a projected $500,000 deficit. The campaign successfully increased unrestricted support from new donors by $65,221, thus expanding the Society's base of support and creating a new donor constituency. The appeal was also sent to trustees, members, and past donors, and generated more than $600,000 for the total mailing. This successful appeal has been repeated annually since 1979, each year featuring a celebrated Zoo baby. Because of the experience and expertise developed in the 1979 campaign, subsequent campaigns have been done in-house.

In the field of research, foundation support by the Jessie Smith Noyes Foundation and the Perkin Fund has allowed an unusual group of participants, the New York Zoological Society, the Population Council at Rockefeller University, and young scientists, to pursue important research in reproductive biology. Since 1981, the Noyes Foundation has provided $108,670 for post-doctoral fellowships to run through August 1984. The Perkin Fund contributed $20,000 for equipment vital to the research. This research has already resulted in an important first: the birth of a gaur (a species of rare and endangered cattle) to a holstein cow after a successful embryo transfer.

The Noyes Foundation has also supported research at the Society's Osborn Laboratories of Marine Sciences (OLMS) since 1977, providing important training for young scientists. Noyes support of post-doctoral fellowships through 1983 amounts to $224,170.

Collaboration between the City of New York and the New York Zoological Society was made possible by a $250,000 grant from the Commonwealth Fund which covers in-house planning, administrative and design costs for the renovation of the Prospect Park Zoo in Brooklyn.

During the '70s, the National Institutes of Health supported various types of international field research, such as the work of ARC field researcher Tom Struhsaker in Uganda, and ARC director George Schaller in Brazil. In recent years this has been largely replaced by private support, including foundations.

Foundations have also contributed significantly to the Society's operating budget. For example, in fiscal year '82, foundations contributed $1,067,000, or 40 percent of the total operating contributions of $2,570,000. Foundation support is essential to the Society's operation. Without this support, we would be unable to pursue new ideas or even continue the fine work already in progress.

We firmly believe that our collaboration with foundations has been a vital element in maintaining the quality and consistency of the work done by the New York Zoological Society.

Sincerely,

JAMES W. MEEUWSEN,
Director, Public Affairs.

NORTH DAKOTA HOSPITAL ASSOCIATION,
Grand Forks, N. Dak., June 20, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: We understand the Oversight Subcommittee of the House Ways and Means Committee has scheduled a hearing on private foundations for June 27–28, 1983. Specifically to find out what foundations are doing and in what ways are their efforts unique. Acccordingly, may I relate an experience we are having in North Dakota, as follows:

Several years ago (1978), we initiated a program in North Dakota called "The Empty Hospital Bed" . . . Swing It! . . . Hold It! . . . But Use It! a program designed to utilize the empty hospital beds in our rural communities—at that time, 37.8 percent of the total beds in the state.

The overall objective was and is to convert some of the acute care beds for other health care use, mainly long-term care without affecting our skilled nursing facilities.

This effort was underway and under capitalized until the spring of 1982 when The Robert Wood Johnson Foundation awarded North Dakota a four (4) year grant of $300,000 under its Rural Hospital Program of Extended-Care Services to conduct a "swing-bed" program. In addition, Robert Wood Johnson awarded five (5) of our smaller (rural) community hospitals $200,000 each to fully participate in the program.

Since the grant (1982) we have been able to conduct what we believe will be a very successful program. Therefore, we have the greatest admiration and respect for The Robert Wood Johnson Foundation for their interest and financial support to provide a program of enormous help to the rural citizens of North Dakota.

I might add their support of a program that could well establish the swing-bed concept throughout the United States, which at the same time, could have considerable impact upon the delivery of health care services in rural America.

We want the Subcommittee to know that we strongly support the voluntary efforts of foundations like the Robert Wood Johnson Foundation. Further, we respectfully request that our letter of support become an official part of the hearing record.

Please know that we would be available to present testimony or answer any questions in respect to your committee deliberations.

Thank you.

Sincerely,

HARVEY C. HANSON, *President.*

NORTHWEST BRONX COMMUNITY & CLERGY COALITION, YOUTH PROGRAM,
Bronx, N.Y., July 20, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing in connection with your Committee's hearings on private foundations. Since neither I nor others in our organization will be appearing at the hearings, we would very much appreciate the inclusion of this letter in the hearing record.

In our long career in community affairs in behalf of youth, we have found the private foundation to be a critically important invention of our pluralistic society. It makes possible new knowledge, new initiatives where none would otherwise be. All of this comes at little cost to society, and the returns are very substantial.

The Northwest Bronx Community & Clergy Coalition Youth Program is a not for profit community based organization dedicated to the physical and social preservation and revitalization of Bronx neighborhoods.

We have called on private foundations to support Coalition sponsored activities which have suffered because of the federal budget cuts or which because of their non-traditional and innovational nature could not be supported under the guidelines of established governmental programs.

Specifically, the Coalition's Youth Employment Center, which places unemployed high school students in after school jobs with local neighborhood retail establishments, and simultaneously teaches them about the nature of business has been supported by the New York Community Trust/Exxon Fund through a $25,000 grant. The program's reliance on the private sector for jobs, its target population, and its "nature of business" curriculum make it unique and innovative. It cannot be supported by any government program. It may however serve as a model for institutionalization under the auspices of New York State government.

In addition, the New York Community Trust and the New York Foundation under annual grants of $25,000 each, support the Coalition's Youth Organization Project. The project, in existence since 1976, promotes a philosophy of youth empowerment through organization around issues of interest to youth. Aspects of this model are increasingly being adopted by other youth serving programs and governmental agencies. Our foundation support is matched by the New York City Youth Board. The match concept allows New York City's local government to increase its support capacity through the cooperation of private foundations. Foundations have made possible much of our work, but more than that, they have contributed significantly to the strength and adaptability of American society.

Sincerely,

ZE'EV AVIEZER, *Director, YDP.*

OLD KENT BANK AND TRUST CO.,
Grand Rapids, Mich., June 8, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: Old Kent Bank and Trust Company is the trustee for over fifty charitable trusts which are now subject to the private foundation reporting requirements and excise tax. Most of these charitable trusts do not hold substantial assets and bear a terrible tax reporting burden filing Form 990-PF, as well as paying the excise tax which will deplete the trust of income producing assets at a faster rate.

We fail to see any logic in the imposition of an excise tax on charitable organizations when these organizations receive favorable treatment from income taxes. The imposition of the current excise tax has defeated the intent of many testators and grantors over the years who have already set aside funds to be used for strictly charitable purposes. The ability to shelter charitable funds from taxes is surely a worthwhile endeavor in that private contributions can fill in the funding gaps for programs whereby government funding is no longer needed. We truly believe that charitable funding of trusts and other foundations has been discouraged because of current reporting and tax requirements.

It is our sincere hope that the Subcommittee on Oversight will both simplify and reduce the reporting requirements and eliminate the two percent excise tax relating to charitable trusts and foundations. We would be most grateful if you would present our views on this matter at the hearings.

Sincerely,

JAMES A. BLANCHARD, *Tax Department.*

PALMETTO HEALTH CARE, INC.,
Pacolet, S.C., June 16, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: This correspondence is an effort to help enlighten members of the Oversight Subcommittee of the House Ways and Means Committee about issues to be addressed during hearings on the role of private foundations on June 27-28, 1983.

Palmetto Health Care is a not-for-profit community organization created in February, 1975, to plan and develop health services for the Pacolet community and surrounding areas. Basing their efforts on the health care delivery principles of W. Ray Burns, Executive Director, and Milton D. Sarlin, M.D., Health Services Director, the organization has developed a primary family health care system that was the result of over four years of preliminary planning. Foremost in the concept is the development of an efficient, knowledgeable, and accessible family health team composed of individuals from the areas of medicine, nursing, pharmacy, dentistry, allied health and social work. Palmetto Health Care addresses itself to a broadened scope of health care that encompasses the physical, mental, and emotional well being and growth of families in a community-based system. An attached narrative provides additional information about Palmetto Health Care, Inc.

In the mid 1970's, Palmetto Health Care began serving rural South Carolinians with three goals in mind: providing quality, accessible primary health care at a reasonable price; training students to serve other rural South Carolina communities; and to participate in primary health care research on topics of interest to rural Americans. Our efforts at meeting these objectives were successful with the assistance of the Robert Wood Johnson Foundation located in Princeton, New Jersey. At the time, our unique organizational structure of a community responsive, not-for-profit corporation had not been proven as an effective means for recruiting and maintaining physicians in rural communities. The "experimental nature" of our project would not have been possible without resources from outside our community. The federal and state funding sources were not geared to supporting new initiatives without proven records. The seed monies provided by the Robert Wood Johnson Foundation for our non-traditional approach to health care has resulted in an organization now providing primary care services to nearly 10,000 families in the communities of Pacolet, Cowpens, and Boiling Springs, South Carolina. Our project has been self-sustaining with funds generated by our practice without subsidy from any outside source.

The Robert Wood Johnson Foundation's support of our particular project illustrated a collaboration between a public community organization and a private foundation. The Foundation provided start-up expenses but excluded "brick and mortar" funding. The communities provided brick and mortar support with the help of our Congressman, The Honorable Carroll A. Campbell and a loan from the Farmer's Home Administration which excluded other start-up expenses. Palmetto Health Care illustrates an effective collaboration between public and private funding sources.

From our experiences, we have learned that private foundations are unique in that they can legitimately provide seed monies for unproven, innovative approaches for providing health care and other human services. Palmetto Health Care has received grants from the Robert Wood Johnson Foundation totaling nearly $450,000 since 1975 for developing unique primary care practice organizations and studying the cost effectiveness of a manual patient medical record.

We respectfully request that this correspondence be made an official part of the hearing record of the Oversight Committee. We appreciate the opportunity to participate in speaking on behalf of the role of private foundations in our society.

Very sincerely,

PALMETTO HEALTH CARE, INC.,
W. RAY BURNS,
Executive Director.

Enclosure.

PALMETTO HEALTH CARE

NARRATIVE

Expanded health services for the rural community of Pacolet, South Carolina and surrounding areas became a reality on July 12, 1976, as Palmetto Rural Family Health Care Center opened its doors to the public. The Pacolet facility is located on Glenn Springs Road, a site purchased by the community through activities planned and instituted by a community task force. This center was built by the communities of Pacolet with Health Care Extension Grant funds from the State of South Carolina and a Farmers Home Administration Loan. As a result of community cooperation and participation, Palmetto Health Care (name shorted in July, 1981) offers its patients broad primary health care services. A satellite center opened August 1, 1978, in Cowpens, a neighboring community twelve miles northeast of Pacolet. The Cowpens community provided a rent-free facility until a 5,700 square foot building was designed and built on property purchased by the community. Palmetto Health Care's second satellite center opened August 10, 1981, in the Boiling Springs community, eight miles north of the City of Spartanburg. A 10,000 square foot facility was renovated in 1982 to house our satellite and a community library.

The present team includes six family practice physicians, one nurse practitioner, two dentists, a speech pathologist, pastoral counselors, clinical pharmacists, administrative staff, and other health related support personnel.

Palmetto Health Care resembles a private medical practice, utilizes community owned facilities, and is more comprehensive in the services it offers, thus affording its patients the convenience of primary health care under one roof in small communities. The Center maintains close relationships with public agencies and other physicians in the area for proper referral and continuity of care.

As a non-profit community organization, Palmetto Health Care was created in February, 1975, to plan and develop health services for the Pacolet community and surrounding areas. Basing their efforts on the health care delivery principles of W. Ray Burns, Pharm. D., Executive Director, and Milton D. Sarlin, M.D., Health Services Director, the organization has developed a primary family health care system that was the result of over four years of preliminary planning. Foremost in the concept is the development of an efficient, knowledgeable, and accessible family health team composed of individuals from the areas of medicine, nursing, pharmacy, dentistry, allied health and social work. Palmetto Health Care addresses itself to a broadened scope of health care that encompasses the physical, mental, and emotional well being and growth of families in a community-based system.

A very important component of Palmetto Health Care is that it is a laboratory for training future health professionals in South Carolina. Palmetto Health Care hopes to attract health manpower to rural South Carolina on a permanent basis by students who will innovate, develop and participate in a comprehensive health care system designed to meet the comprehensive needs of the rural communities it serves. Palmetto Health Care plans to continue to work with health students and thus provide a potential pool for future health manpower in the state.

Leadership now includes Richard B. Bannon, M.D.; Marvin G. Hevener, M.D.; Gary F. Rosenberg, M.D.; Michael T. Mayfield, M.D.; and Ronald M. Tollison, M.D. All physicians are graduates of the Family Practice Residency Program of Spartanburg or Greenville and are Board certified family physicians. Dr. Bannon and Dr. Sarlin have their practices in Pacolet. Dr. Hevener and Dr. Tollison are located in Cowpens, and Dr. Rosenberg and Dr. Mayfield are in Boiling Springs. Dental services are provided in Pacolet by Philip C. Morrow, D.M.D., and Bruce S. Walker, D.M.D., provides dental services in Boiling Springs.

The Pacolet, Cowpens, and Boiling Springs offices have hours from 9:00 a.m. until 5:00 p.m., Monday through Friday. Continuous after hours care and weekend care for emergencies is provided by physicians on call during those hours.

In no way operated or supported by any governmental agency, Palmetto Health Care operates on monies generated through patient visits. Palmetto Health Care has never had Federal grants. The Robert Wood Johnson Foundation awarded a start-up grant to Palmetto Health Care as part of the Foundation's Rural Practice Project in 1976. The private grant was intended to help meet costs of developing a model for rural primary care delivery.

Palmetto Health Care is proud of its pioneering role in providing comprehensive health services for the people of Cowpens, Pacolet, and Boiling Springs communities.

PROJECT CARE CHEMICAL ABUSE REDUCED BY EDUCATION,
GREATER CLEVELAND SCHOOL SUPERINTENDENTS ASSOCIATION,
Bedford Heights, Ohio, June 15, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I understand the Oversight Subcommittee of the House Ways and Means Committee will hold hearings on private foundations on June 27–28, 1983. This letter is in support of continuation of the work of such foundations.

Project CARE, Chemical Abuse Reduced by Education, is sixty-four public school districts in five Northeastern Ohio counties working together to reduce alcohol and other drug use, abuse, and dependency among school-age children. These districts enroll approximately one-quarter million pupils, or about twelve percent of the public school pupils in Ohio. I became director of the project in November, 1979, after retiring from the superintendency of the Fairview Park City School District in suburban Cleveland.

From its beginning, the total operating costs of Project CARE have been funded by the Cleveland, George Gund, and Martha Holden Jennings Foundations. Their three-year support, through November, 1983, will reach $149,685. In addition, the

Kaiser Permanente Foundation underwrote an elementary-middle school curriculum development project for $53,800 in 1982.

Among Project CARE's most significant accomplishments since November, 1979 are:

1. Sixty-four school districts have developed programs to deal with chemical problems in their schools. These programs deal with awareness, education, and prevention; intervention, treatment, and rehabilitation; and law enforcement and criminal justice.
2. Over 1,000 teachers, counselors, administrators and other staff have been trained in week-long "Community Intervention Workshops" to develop identification and intervention skills so they may aid affected children.
3. Several thousand parents and other adults have attended awareness meetings in area schools.
4. Three in-patient, one out-patient, and one extended care facilities for chemically-dependent adolescents have been established in Greater Cleveland. Project CARE assisted in this effort by documenting the need for such facilities.
5. Over 2,000 adolescents have been identified as in need of help with their chemical use problems.
6. Over 1,200 adolescents have been sent to in-patient or out-patient treatment programs.
7. Over 1,500 students were placed in extensive in-school and out-of-school counseling programs.
8. "Core" groups of trained personnel exist in most districts to plan and implement district-wide programs.
9. Support groups have been established in most school districts. These include "aftercare" groups for pupils returning from treatment; "insight" groups for high-risk students, such as children of alcoholics; and "concerned persons" groups for pupils who need, or feel they need, support to stay "straight."

These are just a few of the significant indicators that Project CARE is working in Greater Cleveland. We have traveled Ohio and other parts of this nation with the Project CARE story, and many communities are copying our model. We believe that we are in the forefront in dealing with this pernicious, insidious social problem which is affecting countless children and adolescents.

This major effort could not have started, nor could it have reached its present status, without foundation support. Chemical abuse problems are not just school problems; they are total community, perhaps global, problems. This problem has been thrust upon the schools at a time when they are struggling with dwindling financial resources. The only solution for Project CARE has been the generous support of private foundations. We believe it is essential that these foundations continue to function freely as they support efforts of schools and other agencies to deal with some of the perplexing problems of our society.

Very sincerely,

FRANK W. BARR, *Director*.

PROGRAM TO CONSOLIDATE HEALTH SERVICES FOR HIGH-RISK YOUNG PEOPLE,
Washington, D.C., June 20, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR MR. SALMON, It is my understanding that on June 27-28, 1983, the Oversight Subcommittee of the Ways and Means Committee will be holding hearings on private foundations. I am writing to tell you about a grant we have received from The Robert Wood Johnson Foundation and to request that this letter be made an official part of the hearing record. I believe that the story of our grant program demonstrates the unique role private foundations can play in encouraging innovation and improvement in health care delivery. This role seems particularly important in an era of fiscal constraint when most health programs for the poor are focused on preserving services rather than thinking about growth, change and better care for patients.

In July 1981, Meharry Medical College received a grant to administer a $12 million national program funded by The Robert Wood Johnson Foundation to assist 20 projects consolidate and better target medical services for some of the nation's most vulnerable teenagers and young adults. As the Committee may be aware, young people ages 15-24 are the only age group in the United States with increasing death rates—up eight percent since 1960 and now totaling 50,000 deaths annually.

Eight serious health problems are contributing particularly to the increased risks to young Americans' health. They include the following:

Alcohol abuse affects 3.3 million young people. Hospitalization for alcoholism among 15 to 24 year olds increased 44 percent betwen 1974 and 1978.

Drug abuse. A 1978 survey of high school seniors indicated that 54 percent used an illegal drug in the previous year.

Accidents caused nearly 55 percent of the deaths for young people in 1978, approximately one-half were alcohol related and three-quarters the result of automobile accidents.

Suicide rates for young people have increased 75 percent since 1968 compared with 17 percent for all other ages.

Homicides over the past 20 years have nearly tripled in rate for 15 to 24 year olds—from 4.7 per hundred thousand in 1960 to 13.2 in 1978.

Teenage pregnancy results in approximately 600,000 births to mothers 19 or younger, often preventing young women from completing high school or becoming self supporting.

Venereal disease has increased dramatically with about one of every eight young people acquiring VD each year, totaling 2.5 million individuals.

Mental illness, which contributes dramatically to suicide, homicide as well as drug and alcohol abuse, is the fourth leading cause of hospitalization among young people.

During the nineteen sixties and seventies, many public and private agencies created a multitude of service programs to respond to the needs of young people. Nationally, some 2,000 organizations sponsor services, each designed to prevent or treat one or a few of the major health problems affecting young people.

While many of the special programs that were established to address these problems have made an impact on their patients, these programs have faced serious difficulties. For example, there are so many services in different locations that young people with multiple problems may not make all the stops necessary to get adequate care. Additionally, these services are vulnerable to cutbacks in government spending. Moreover, there are few physicians trained in the special health needs of young people.

To respond to this dilemma of rising need and decreasing resources, The Robert Wood Johnson Foundation designed a program that would consolidate the efforts of major providers of services to high-risk youth—the teaching hospitals and public and voluntary health agencies. The teaching hospitals have become increasingly involved in providing ambulatory medical care and many have established specialized treatment services for young people. However, these clinical services are usually limited to the hospital and therefore serve only those young people who turn to the hospital for care.

Public health departments and private agencies also have established services, including family planning, prenatal and maternity care as well as drug abuse and alcohol treatment services.

Through the High-Risk Young People's Program, the mutual efforts of the two kinds of health providers are combined. Clinical faculty from the teaching hospital have joined with selected private and public agency staff to provide care in community locations. They are combining services to offer a broad range of care, which should make health services more accessible to individuals with multiple health problems.

In the High-Risk Young People's Program, the $12 million provided by The Robert Wood Johnson Foundation is divided among 20 projects which serve large inner-city areas, medium-sized cities and a network of rural communities. These projects involve more than 25 teaching hospitals and 57 public and private voluntary agencies. Over a four-year period, they are attempting to demonstrate whether medical services for high-risk youth can be sustained and improved during a time of reduced public expenditures.

Although many public health officials and physicians have long urged consolidation--recognizing the potential for cost savings and improved care—until now there has been little incentive to do so. The recent funding reductions made it timely to demonstrate the feasibility and effectiveness of this concept.

During the past year, the 20 teaching hospitals and their co-sponsoring agencies have begun the process of putting in place consolidated health services for high-risk youth. In addition to providing care in the community to address the needs of the target population, the projects are also developing training programs for physicians and other health providers to increase the number of professionals trained in the care of high-risk youth. As we have received reports from these projects during their first year, we have been encouraged by their energy and enthusiasm in tackling these problems and their willingness to work together to improve care for a neglected population.

We have also been encouraged because communities which applied for Foundation support but were not funded have gone ahead with their own efforts to consolidate services for high-risk youth, demonstrating the impact innovative programs may have beyond institutions that are funded. For example, Akron Children's Hospital (Ohio) which had not received support from the Foundation, submitted its application to the State and was funded. Building on that experience, the State of Ohio has developed a statewide program through its Unit on Family Planning and Adolescent Health to support projects which would make "systems changes to benefit high-risk adolescents." We understand that the State of Ohio hopes to make between five and ten grants of $50,000–$60,000 each for this purpose in 1983.

The health problems of high-risk youth are substantial and our Program will only begin to address the needs which exist. However, without the support of the Foundation, this beginning might not have been made. And without the encouragement of the Foundation model and grant support, many categorical programs might not have been willing to join the others to provide integrated, comprehensive services for high-risk young people.

Should you or members of the Committee on Ways and Means have any questions about the Program to Consolidate Health Services for High-Risk Young People, I would be pleased to provide additional information.

Sincerely,

HENRY W. FOSTER, JR., M.D.,
Director and Chairman, Department of Obstetrics and Gynecology, Meharry Medical College.

Enclosure.

THE ROBERT WOOD JOHNSON FOUNDATION

LIST OF PROJECT CITIES AND INSTITUTIONS

Baltimore (two projects)—University of Maryland Hospital*, Baltimore City Health Department; and Johns Hopkins Hospital* Baltimore City Health Department

Boston—Health and Hospitals Inc.—Boston City Hospital*; Dorchester House Multi-Service Center; Harvard Street Neighborhood Health Center, Inc.; Roxbury District Court; The School Committee of the City of Boston; Boston University School of Medicine; Boston Area Health Education Center; and The Neighborhood Development and Employment Agency of Boston.

Chicago—Cook County Hospital*; Chicago Department of Health; Chicago Comprehensive Care Center; and Chicago Board of Education.

Cincinnati—University of Cincinnati Hospital*; Central Psychiatric Clinic; and City of Cincinnati Department of Health.

Cleveland—Cleveland Metropolitan General Hospital*; Hough-Norwood Family Health Care Center; The Free Medical Clinic of Greater Cleveland; Thomas F. McCafferty Health Center, City of Cleveland; and Department of Public Health and Welfare.

Dallas—Parkland Memorial Hospital*; University of Texas Health Science Center at Dallas; and Dallas Countywide Health Department.

Detroit—Children's Hospital of Michigan*; Detroit Department of Health; Henry Ford Hospital; Hutzel Hospital; and United Community Services of Metropolitan Detroit.

Hartford—University of Connecticut, School of Medicine*; City of Hartford, Health Department; Project Fire, Addiction Services Division, Department of Corrections; and State of Connecticut, Department of Health Services.

Indianapolis—Indiana University Hospitals*; and Marion County Health Department-Health and Hospitals Corporation of Marion County.

Jackson—University Hospital at the University of Mississippi* Medical Center; Jackson Hinds Health Centers; and High School.

Los Angeles—Childrens Hospital of Los Angeles*; and Los Angeles Free Clinic.

New Haven—Yale-New Haven Hospital*; and Fair Haven Community Health Clinic.

New York (two projects)—Montefiore Hospital and Medical Center*; Bronx Municipal Hospital Center; North Central Bronx Hospital; Dr. Martin Luther King, Jr. Health Center; The Comprehensive Family Care Center; The Montefiore-Morrisania

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*Principal grantee institution.

Comprehensive Health Care Center; Bronx-Lebanon Hospital Center*; and Planned Parenthood of New York City, Inc.

Oklahoma City—University of Oklahoma Health Sciences Center*; Oklahoma Children's Memorial Hospital; Oklahoma State Department of Health; Oklahoma Area Indian Health Service; and Cherokee Nation of Oklahoma Health Department.

Rochester—University of Rochester, School of Medicine & Dentistry*; Monroe County Department of Health; and Threshold Center for Alternative Youth Services, Inc.

San Diego—University of California, San Diego School of Medicine*; Operation Samahan Health Clinic; Otay Community Clinic; Imperial Beach Community Clinic; and San Ysidro Comprehensive Health Care Clinic.

San Francisco—University of California at San Francisco School of Medicine*; Department of Public Health, City and County of San Francisco; Hospitality House; Youth Guidance Center, Department of Public Health, City and County of San Francisco; Kaiser Permanente, San Francisco; Mt. Zion Hospital; and San Francisco Children's Hospital.

Washington—Howard University Hospital*; District of Columbia Department of Human Services; and Center for Youth Services.

PPL Industries,
Minneapolis, Minn., June 17, 1983.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: I am writing in support of private sector giving, particularly the contributions from private foundations, whether corporate or family foundations.

PPL Industries is a non-profit corporation which is one and one half years old. During our short history we have received $200,000 from foundations and corporations and brought in $220,000 from earned income in the private marketplace. From 1984 forward we will not need private philanthropic support any longer. The seed money we have received from the foundations and corporations will have enabled us to be completely self supporting.

PPL Industries, Incl. is a private non-profit corporation dedicated to employ "hard to employ" or "structurally unemployed" minority workers in unskilled labor intensive jobs. The project is working very well. We have consistently employed 35 workers and we expect to be at 70 by the end of this year.

I think PPL Industries is an example of the type of creative innovate work the foundations and corporation are doing to solve our most severe social problems in the Minneapolis-St. Paul area.

The foundation/corporate dollars always come first—thus leveraging many more dollars from the private sector/earned income area and the voluntary sector.

I strongly urge you to do all that you can do to aid the functioning of foundations and do nothing to hamper their operation.

Please make my comments an official part of the hearing record.

Thank you very much for your time.

Cordially,

Francis M. Kenney, *Executive Director.*

Project for Pride in Living, Inc.,
Minneapolis, Minn., June 15, 1983.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: We are writing in support of private sector giving, particularly the contributions from private foundations, whether corporate or family foundations.

As an administrator of an organization which over the past 12 years has received $1,414,005 from private foundations, $1,803,584 from the public sector, and $6,686,196 from earned income in the private marketplace, I think I can speak with some authority.

I'd like to speak specifically to the contributions to and results of our 12 year old corporation, Project for Pride in Living, Inc. (PPL), even though I have been on the board of other nonprofits and have seen similar results come about time and time again.

We have been receiving contributions from approximately 60 foundations. Over the years I have found out that:

They have been able to respond quickly and judiciously to the needs and opportunities we uncover.

They have been able to foster innovative and creative solutions to the many pressing human problems we deal with.

They have been our community's "risk capital and venture capital" fund.

I have seen this fund pay large and continuous dividends to their total community. Their dollars have leveraged other energies, both in money and volunteer services to a very large degree.

In our organization alone, this past year we received $124,417 from foundations (both corporate and family) and $2,996,529 from the public sector and earned income. This amounts to a 1:24 leveraging—And, this does not count all of the volunteer contributions that this money was able to generate.

The foundation dollars always comes first; without the foundations taking the risk, none of the other dollars would have come about and none of the 300 housing units we have built and the thousands of clients we have served would have occurred.

As an ordinary citizen, I strongly urge you to do all that you can to aid the functioning of foundations and do nothing to hamper their operation.

Please make my comments an official part of the hearing record.

Thank you very much for your time.

Cordially,

JOSEPH K. SELVAGGIO, *Executive Director.*

STATE OF MINNESOTA,
DISTRICT COURT, SECOND DISTRICT,
St. Paul, Minn., June 13, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON. The House Ways and Means Committee will be holding hearings June 27-28 about charitable foundations. I would like to bring to your attention a special project of The Saint Paul Foundation called the Community Sharing Fund.

The Community Sharing Fund provides emergency funding to organizations and individuals with human service needs when nobody else will. In 1982 the Community Sharing Fund granted over $140,000, often on a turnaround basis of 24 hours. The Saint Paul Foundation staffs the program and distributes the funds, with the assistance of an Advisory Committee composed of people from the community. Funds to be granted are raised from foundations and corporations in the community. Donors in recent years include: Conwed Foundation, F.R. Bigelow Foundation, The Dayton-Hudson Foundation, The Josten's Foundation, Inc., McKnight Foundation, Northern States Power Company, and The Saint Paul Foundation.

The Community Sharing Fund is noted for its willingness to fund experimental programs in areas of emerging social needs. Support for the non-traditional and the grassroots is important as communities search for new ways to respond to increased demands upon our human service system.

The Community Sharing Fund illustrates the unique role foundations play in facilitating cooperation among grantmakers and social service providers. The benefits to our community are invaluable and are keenly felt by individuals in crisis who receive timely assistance. The attached documents show the kind of things we do. Thank you for your attention.

Sincerely,

JUDGE JOSEPH P. SUMMERS,
Ramsey County District Court,
Community Sharing Fund, Chairman.

THE SAINT PAUL FOUNDATION COMMUNITY SHARING FUND

Purpose: To provide an accessible, quick response resource for emergency and short-term human service needs of individuals and agencies in the east metropolitan area.

Amount: Grants ranging from $50 to $5,000.

Eligibility: 1. Grant must be directed towards fulfillment of an important charitable purpose.

2. The need must be immediate—that is, normal fundraising efforts cannot be mobilized in time to respond to the need.

3. Other resources have been considered and are not available to meet the need.

4. Applicants from Ramsey, Washington and Dakota Counties will receive priority.

5. Grants to individuals will be made only on referral by a bona fide social service agency.

Procedure for Applying: Call or send a letter stating amount requested, purpose, urgency or need and name, address and telephone number to: Ms. Jo Haberman, The Saint Paul Foundation, 1120 Northwestern National Bank Building, St. Paul, MN 55101, 224-5463.

Response: Requests will be considered by The Saint Paul Foundation staff and an Advisory Committee, and response will be made as promptly as possible.

Community Sharing Fund 1982 Grants

The Anoka County Task Force for Battered Women: Transportation for battered wife and five children	400
American Red Cross, St. Paul Area Chapter:	
Emergency living expenses for man who lost wallet	100
Emergency travel for father's funeral	80
Emergency living for single parent	370
Emergency housing	101
Emergency housing	21
Travel expenses for family with employment in Iowa	50
Reimbursement for emergency shelter	125
Emergency living expenses	160
Emergency living expenses	210
Medical equipment for woman	45
Emergency living for unemployed man and family	320
Rent for single parent family of three involved in car accident, pending return to work	260
Travel expenses for elderly abused woman	150
Transfer of a body for burial by relatives in North Dakota	300
Rent for a single parent due to illness	100
Medical equipment to prevent need for an operation	45
Rental payment for robbery victim	290
Assist with rent for individual	150
Purchase electric bed for individual	1,779
Capitol Community Services: Interim funding for Thomas Dale Community Center	3,000
Casa De Esperanza:	
Travel funds for battered woman to retrieve child from South Dakota	160
Emergency operating expenses for November for Hispanic battered women's shelter	5,000
Catholic Charities of the Archdiocese of Saint Paul and Minneapolis:	
Assistance for single parent just released from chemical dependency treatment	380
Purchase eyeglasses for single parent to enable employment rehabilitation	173
Contract for deed payments for single parent to prevent loss of home	500
Emergency living expenses for recently employed/divorced mother of two	300
Transportation costs for client to attend mother's funeral	288
Mortgage assistance so FHA subsidy can be obtained	403
Mortgage assistance to prevent foreclosure for family of seven—husband had surgery	468
Mortgage assistance for single parent family whose business was destroyed by fire	500
Emergency living expenses for family in counseling	400
Interim day care expenses for single parent attending vocational school	360
Utility payment to assure a Section 8 rent certificate for single parent	632
Mortgage assistance to prevent foreclosure in final year of payments—social security disability reduced	500
Emergency living expenses due to illness	500
Debt payment for money management client—single parent	200

Rent for family of eight to prevent eviction until husband returns to work	400
Emergency living expenses for client in counseling, until child support resumes	500
Centro Cultural Chicano: Women's Employment Project	5,000
City of Saint Paul Model Cities Health Clinic: To subsidize clients who are ineligible for reimbursement	500
Community Action Council:	
Grant for revolving rent fund in Dakota County	3,000
Grant for Dakota County Emergency Rent Fund	3,900
Dakota County Human Resources: Purchase of an ultraviolet lamp for a retarded person with massive dermatitis problem	269
Dorothy Day Center:	
Balance of wheelchair payment for paraplegic	140
Street person to travel to a job in Cleveland	60
Emergency Fund Service, Inc.:	
Revolving loan fund for emergency rentals	5,000
Revolving rent fund	5,000
Revolving rent fund	4,000
Matching grant for rent fund	1,465
Transportation of body for burial	250
Matching grant for rent fund	880
The Episcopal Diocese of Minnesota: Start up funds for single parent employment program	3,000
Family Services of the Saint Croix Area: Partial payment of furnace replacement for family in counseling	495
Family Service of the Greater Saint Paul Area:	
Emergency living for family—medical problems	637
Mortgage payment to prevent foreclosure for previously unemployed head of households	450
Emergency furnace repair for client	184
Emergency expenses for family with chemical dependency problem	475
Partial payment for electric wheelchair for quadriplegic	500
Mortgage payments to avoid foreclosure for single parent attending Vo Tech Institute	458
Trailer lot rent to prevent eviction—related to CD problem	330
Mortgage payment for single parent mother of three—support payments held up	500
Mobile home payment for family with recent medical expenses, reduces income	342
Mortgage payment to prevent foreclosure—husband receiving CD treatment	500
Emergency living expenses for family, four children employment in July	200
Medical expenses for diabetic woman—until MA appeal is heard	25
Payment of phone bill to prevent disconnection for family with medical need	167
Moving expenses for elderly woman with health problems—to be near family	225
Mortgage payment for family with disabled husband	500
Mortgage payment to prevent foreclosure	466
Past due mortgage payments for individual	500
Granville House, Inc.: Emergency operating expenses for chemical dependency treatment facility	5,000
Greyhound:	
Bus ticket to Oklahoma for abused woman	84
Emergency travel for woman to visit son in hospital	148
Travel expenses for Hispanic woman to visit sick mother in Texas hospital	198
Guadalupe Service Center, Inc.: Emergency living for woman who was ill, unemployed	200
Hallie Q. Brown Community Center, Inc.:	
Mortgage assistance for single parent to prevent foreclosure	500
Mortgage assistance to prevent foreclosure for financial counseling	500
Harding High School: Summer sports skills program	750
Heart of the Earth Survival School: Interim funding for prison program	4,000
Hispanos En Minnesota:	
Transportation funds for battered woman to retrieve abducted child	200

Travel funds for couple to return to California to find work	137
Fund Chemical Dependency Advocate position	2,349
Bus transportation for individual to seek employment	99
Housing and Redevelopment Authority of Washington County, Minnesota:	
Revolving rent fund	2,000
Revolving rent fund	2,400
Individuals:	
Emergency mortgage payment to avoid eviction following death in family	255
Interim expenses for disabled man enrolled in TVI until grant/loan is made available	165
Financial emergency caused by rape and robbery	50
Rent deposit for disabled woman	200
Inver Hills Community College: Day care costs for single parent attending Inver Hills, until county money is available	200
B. Robert Lewis House: Travel funds for battered woman and children to return to parents	139
Lao Family Community, Inc.:	
Emergency operating expenses	1,000
Consultant fees to help develop small business opportunities	1,950
Lutheran Social Service of Minnesota:	
Emergency living for single parent mother of four injured at work	500
Support of summer school project in inner city church locations	5,000
McIntyre's Center for Gifted Children: Repairs to a furnace	2,000
Merrick Community Center/Dayton's Bluff Human Services:	
Electrical work for foster home to prevent separation of emotionally disturbed siblings	810
Emergency living for man who broke neck at work	250
Metro Deaf Senior Citizen's, Inc. Operating expenses for July, August, until long-term plan is implemented	3,000
Minnesota Citizens Council on Crime Justice:	
Job travel funds for man who was assaulted	55
Rent for December for individual	350
Neighbors, Inc.:	
Child-care and books for Aid For Dependent Children parent until student loan/grant available	300
Rehabilitation equipment for man undergoing surgery	75
Funds to allow institutionalized woman to reestablish home in community and regain custody of children	600
Emergency living for previously unemployed woman with medical problems	500
New Beginning Center:	
Emergency living for single parent recently reemployed	400
Emergency living for student until work/grant available	200
Interim rent until unemployment insurance is available	200
North Suburban Family Services Center:	
Trailer home payments for client, to prevent foreclosure	500
Mortgage payments to prevent foreclosure	400
Project RISE:	
Emergency living expenses for woman—job pending in two weeks	200
Emergency living for client until job starts	70
The Ramsey County Citizens Committee for Economic Opportunity, Inc.:	
Emergency living expenses for family of eight	250
Emergency living expense for single parent	315
Redi Care, Inc.: Wheelchair for quadriplegic foster child	3,482
Regional Kidney Dialysis Program: Emergency expenses for kidney dialysis patient	300
St. Croix Day Care Center: Emergency operating expenses	1,000
St. Paul American Indian Center, Inc.:	
Emergency expenses for recently reemployed man—wife has Parkinson's disease	250
Indian Child Welfare Program interim funding	1,600
Interim operating expenses for July and August while Federal grant is considered	4,000
Travel expenses for abused woman	50
Emergency rent for single parent until AFCE applies	95
Emergency living expenses for single parent family	50

Emergency rent for individual	100
St. Paul Council of Camp Fire: Operating expenses for June—emergency caused by replacement of stolen equipment.	1,700
St. Paul Area Council of Churches: Travel expenses for victims of child molesters	50
St. Paul Tenant's Union: Interim funding for tenants services	2,400
St. Paul Urban League:	
Mortgage payment to prevent foreclosure—single parent, two children	446
Emergency living expense for single parent client, purse stolen	140
Mortgage payment to prevent eviction for single parent, ill and unemployed	450
Rent assistance for family of five to prevent eviction	450
Assist with mortgage payment	305
Southern Minnesota Regional Legal Services, Inc.: Medical equipment for arthritic client	250
South Community Youth and Family Counseling Services: To support program for 120 troubled and "normal" adolescents	500
Summit University Crime Prevention Council:	
Emergency expenses of youth program	100
Emergency living expenses for family of six, until income resumes	360
Tac Two, Inc.: Orthopedic shoes for client to enable employment	118
Twin Cities Building Trades Employee Assistance Program Inc.: Emergency rent for single parent until income resumes	280
University of Minnesota Episcopal Center:	
Emergency living expenses for single parent student, until student grant available	400
Mortgage payments for single parent to prevent foreclosure	500
Day care expenses for single parent enrolled at University of Minnesota until part-time job can be resumed	200
Day care expenses for student	315
Day care expenses for single parent	225
Emergency living expenses for single parent family	475
Victory House: Orthopedic shoes to enable man to work	100
West Seventh Neighborhood Center, Inc.: Relocation of telephone system	2,500
Women's Advocates:	
Travel expenses for battered woman to return to family	100
Emergency travel expenses for battered woman and child	150
Travel expenses to relocate battered woman and child	50
Phone installation for safety of abuse victim	132
Emergency living expense for battered woman	75

Board of Ramsey County Commissioners,
St. Paul, Minn., June 13, 1983.

Mr. **John J. Salmon,**
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: I am writing because of my interest in the congressional hearings on foundations currently scheduled for June 27 and June 28.

I want to cite one of many examples of how foundations in Minnesota address current critical needs and cooperate with government in furthering the public welfare. In mid 1982, at the request of the Ramsey County Board of Commissioners, The Saint Paul Foundation played a critical role in helping the Ramsey County Board finance and operate a County appointed, Blue Ribbon Commission. The charge given to this Commission was to investigate and report to the County Commissioners on the impact of reductions in public funding on the citizens of Ramsey County and recommend a plan of action based on these findings. Through The Saint Paul Foundation, contributions were raised from the community to finance the Commission's expenses. The contributors to the financing of the Commission's operating costs were: The Dayton-Hudson Foundation, Edwards Memorial Trust, F. R. Bigelow Foundation, First Bank Saint Paul, Northwest Area Foundation, The St. Paul Companies, Inc., and The Saint Paul Foundation. The total cost of the study was $18,104.

Within six months of the Commission's appointment, a final report was submitted to the Ramsey County Board by the Blue Ribbon Commission. The Commission's short-range findings can be summarized as follows: funds need to be raised from foundations, corporations and individuals to finance the purchase of emergency food, shelter, and clothing for those who have been adversely affected by the sudden combination of reductions in public funding and the economic downturn. These funds are to be raised with the expectation that their distribution will help provide certain basic services during a period of transition while general relief and other publicly financed benefit programs are restored.

The short-range recommendations of the Commission have, to some degree, all been met. Corporations, foundations and individuals, in response to the Commission's findings joined together and generously contributed to a newly created Emergency Care Fund in The Saint Paul Foundation. In the promotion of this Fund, Congressman Bruce Vento, Councilman James Scheibel and many representatives of foundations and corporations all cooperated in appealing to potential donors for funds. Thus far, a total of $879,440 has been pledged. Once funds were raised, these same individuals worked together in developing and executing a methodology within The Saint Paul Foundation for distributing funds to help with the needs mentioned above. This program has been working so successfully that the Ramsey County Board of Commissioners has requested that the state allocate Ramsey County's share of state emergency funds to the Emergency Care Fund. Special note should be made of the lead role that the 3M Corporation took in matching contributions of its employees to this Fund. A similar matching incentive program was conducted by the West Publishing Company.

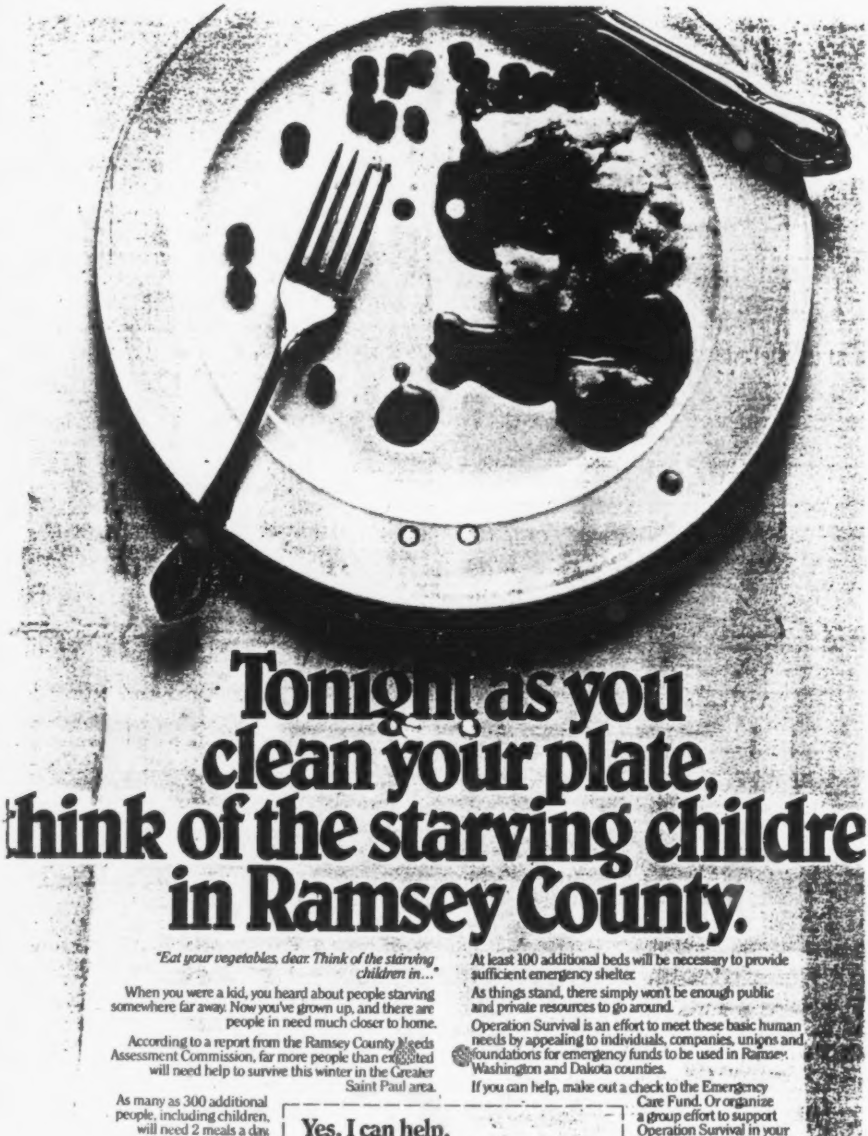
The Emergency Care Fund is a classic example of timely public-private community support for citizens in need. While what was accomplished could not and was not intended to solve the problems of those affected by funding cutbacks and the economic downturn, this effort clearly played a key role in relieving the pain of those adversely affected by these factors.

The role of The Saint Paul Foundation in this process was one of endorsement, cooperation and quiet encouragement. With Saint Paul Foundation support, many other foundations, corporations, Ramsey County and individuals have been willing to make use of the Emergency Care Fund to meet the needs outlined above. The attachments to this letter will provide you with additional information on this Fund.

Sincerely,

Diane Ahrens,
County Commissioner, District 4.

Attachments.



Tonight as you clean your plate, think of the starving childre in Ramsey County.

"Eat your vegetables, dear. Think of the starving children in..."

When you were a kid, you heard about people starving somewhere far away. Now you've grown up, and there are people in need much closer to home.

According to a report from the Ramsey County Needs Assessment Commission, far more people than expected will need help to survive this winter in the Greater Saint Paul area.

As many as 300 additional people, including children, will need 2 meals a day, 7 days a week for the next year.

As many as 500 families—2,000 individuals—will lack warm, serviceable clothing this winter.

At least 100 additional beds will be necessary to provide sufficient emergency shelter.

As things stand, there simply won't be enough public and private resources to go around.

Operation Survival is an effort to meet these basic human needs by appealing to individuals, companies, unions and foundations for emergency funds to be used in Ramsey, Washington and Dakota counties.

If you can help, make out a check to the Emergency Care Fund. Or organize a group effort to support Operation Survival in your neighborhood or where you work.

Tonight as you clean your plate, do more than just think about people starving. Think about how you can help.

Yes, I can help.

I have enclosed my contribution of $________

Name________

Address________

City________ State____ Zip____

Mail contributions to the Emergency Care Fund,
Saint Paul Foundation, 1120 NW National Bank Building,
Saint Paul, MN 55101.

Call 224-5463 for more information.

OPERATION SURVIVAL FUND SEEKS $500,000

(By Bill Gardner)

Hundreds of people will need help getting food, clothing and shelter this winter in Ramsey County, and the county should raise $500,000 to pay for the emergency care, a panel appointed by the county commission was recommended Tuesday.

"We have to do something so we don't have people freezing and don't have people starving," said Nan Skelton, a spokeswoman for the 41-member Blue Ribbon Commission on Needs Assessment.

The commission announced it is setting up Operation Survival, which hopes to raise $500,000 in donations from individuals, corporations, unions and foundations to meet food, clothing and shelter needs this winter.

"We need to make sure the food shelves are filled and there are enough beds, cots and blankets and warms places for people to live so they don't have to sleep in doorways," said Skelton.

The money can be raised in a short time, Skelton said. "I think the people will rally behind this."

As many as 300 people will need two meals a day, seven days a week, for a year, the commission found. At $1 a meal, that will cost $219,000.

About 500 families, or 2,000 individuals, "will lack warm and serviceable clothing this winter," according to the report. This clothing will cost about $20,000.

There will be a need for additional shelter for 100 people for 180 days, the report said. This will cost about $180,000.

Ramsey County Commissioner Diane Ahrens, who proposed the formation of the commission, said, "It is important that we all act together to assure that none of our citizens are hungry, homeless or cold because of the current economy and social policy."

Ahrens said county commissioners had a fairly good idea there was a serious problem and appointed a commission because "we felt it was important that the public at large be aware of the extent of the problem."

The food, clothing and shelter will be provided through existing programs, said Skelton. "We're not suggesting that we create new programs, but these programs need additional money for food and to expand to house new people."

Skelton said the commission decided to form Operation Survival because "we need to mobilize an effort now. We can't just issue a report and do something next July."

The commission blamed much of the problem on governmental cutbacks in funding for social programs. "It is difficult to find a program of cash assistance, or an area of social services—whether it be in the area of employent and training, health, education, day care, or legal services—that has not been curtailed," the report said.

Contributions to Operation Survival may be addressed to Emergency Care Fund, St. Paul Foundation, 1120 Northwest National Bank Building, St. Paul, Minn. 55101.

THE EMERGENCY CARE FUND GRANTS—1982

Catholic Charities of the Archdiocese of St. Paul and Minneapolis.	For meals and clothing at the Dorothy Day Center	$8,800
St. Luke's Ecumenical Emergency Shelter Program	For emergency shelter	10,000
Church of the Assumption	For the Emergency Needs Fund of the Mustard Seed	12,000
Neighbors, Inc	For the distribution of surplus food	3,890
New Beginning Center	For emergency food, clothing and shelter services	5,500
People, Inc.	For emergency shelter	2,700
Phalen Area Community Council	For Alley Shoppe 109 to provide clothing	1,000
Victory House	To provide shelter and meals	26,082
Catholic Charities	For emergency shelter	104,816
Women's Advocates	For emergency shelter	3,054
Community Action Council	For emergency services program	11,589
Emergency Fund Service	For distribution of surplus food	16,000
New Beginning Center	For emergency services	4,000
Church of the Assumption	For emergency services program at Mustard Seed	7,466
St. Paul Urban Indian Health Board	For medical supplies	3,400
St. Paul Reformation Lutheran Church	For food and shelter	7,900
Emergency Fund Service	For emergency rent assistance	12,000
Community Action Council	For emergency rent assistance	5,500
Washington County HRA	For emergency rent assistance.	3,000
Saint Paul YWCA	For emergency shelter.	18,187

THE EMERGENCY CARE FUND GRANTS—1982—Continued

Dayton's Bluff Human Services	Emergency food	1,320
Juel Fairbanks Aftercare Residence	Emergency shelter and meals	7,560
Vietnam Veterans' Awareness Council	Emergency shelter and meals	5,595
Washington County HRA	Distribution of surplus commodities	4,000
Emergency Fund Service	Purchase of high protein and perishable food for emergency distribution.	120,000
St. Paul American Indian Movement	Emergency shelter, meals and transportation	3,000
Church of the Assumption for Loaves and Fishes Too	Emergency hot meals	18,550
Saint Paul YWCA	Emergency shelter for women and children	58,126
First Trinity Church of God in Christ	Emergency hot meals	5,000
Shiloh Baptist Church	Emergency hot meals	5,000
St. Paul Reformation Lutheran Church	Emergency shelter and hot meals	25,620
Victory House	Emergency shelter and meals	29,212
Lutheran Social Service of Minnesota	Emergency shelter and meals for women	11,705
Total Grants Committee through May 31, 1983		561,572
Total paid through May 31, 1983		182,647

THE RESEARCH LIBRARIES GROUP, INC.,
Stanford, Calif., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing as President of the Research Libraries Group Inc. (RLG), a non-profit corporation owned by twenty-five of the nation's major universities and other research institutions. RLG is dedicated to improving the management of information resources necessary for the advancement of scholarship. It provides a framework through which the nation's major research libraries can work together to fulfill their mission of collecting, organizing, preserving, and providing information. Its goal is to promote the sharing of technology and resources that will enable research libraries to meet the challenges of the coming decade and thereby to improve our national capacity for serious research in all fields of knowledge.

Founded in 1974 by four research institutions in the northeast, RLG has, since its inception, benefited from the support of the private foundation community; in fact, without the support of the Andrew W. Mellon Foundation, RLG might well not have come into being. Over the past eight years, many other foundations have followed Mellon's example and collectively contributed over $10 million to further the programs and objectives of RLG. Specifically, their support has enabled us to undertake a number of projects including: the development of a sophisticated automated information system, the Research Libraries Information Network (RLIN), that supports the technical processing requirements of research libraries and enables researchers to locate difficult-to-obtain information; the development of enhancements to RLN that allow East Asian libraries to process their materials in the vernacular; and the initiation of a cooperative microfilming program that will preserve deteriorated materials that serve as an important scholarly resource for the study of 19th-century American culture. In addition to this project-related support, general operating support has been the key to the development and expansion of RLG from a partnership of four institutions to one of twenty-seven. Indeed, without the infusion of general support from five foundations in 1981, RLG might well not have survived a severe financial crisis.

The example of RLG testifies to the valuable service that private foundations provide, and the importance of preserving these independent funding sources. Private foundations provide a crucial complement to government, and to individual philanthropy—a complement that is uniquely American and one that has made a distinct and valuable contribution to American society. In the case of RLG, private foundations' ability to respond to needs which go beyond the more immediate concerns of personal or regional philanthropy, and to fund projects which may be too esoteric to be attractive to individual donors or government agencies, has been critical. With the assistance of foundations, RLG has been able to foster cooperation between public and private research institutions unique in the annals of higher education; without such assistance, the parnership would not have evolved.

I hope that this letter will be useful in your deliberations and would request that it be made an official part of the hearing record. I am enclosing some literature that provides background information about The Research Libraries Group.

Sincerely yours,

RICHARD W. MCCOY, *President.*

[Additional material has been retained in the subcommittee files.]

THE UNIVERSITY OF ROCHESTER MEDICAL CENTER,
Rochester, N.Y., June 15, 1983.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I write to strongly support HR 3043 introduced by Representative Conable. If enacted, this legislation will give people the same tax incentive to make gifts to foundations as they now have to make gifts to other charitable institutions. It should clarify and simplify regulations now imposed on foundations and make it easier for them to respond to new needs arising from changes in economic conditions and in government funded policies.

As the recipient of both training grant support and research support from the Henry J. Kaiser Family Foundation, the Robert Wood Johnson Foundation, and the Commonwealth Fund, I can attest to the importance of medical foundations in filling gaps in training and research that are not adequately met through federal initiatives. In my experience, the medical foundations have been uniquely helpful in providing important support for applied research in the health field. Without this support, the efficient transfer of biomedical knowledge to the front line of health care would likely be impeded.

In the past ten years, my division has been the recipient of more than $1.5 million in grant support from the foundations mentioned above. Their initiatives have resulted in: an increasing proportion of physicians entering the practice of primary care from this University, new knowledge leading to more cost effective health care for common medical problems in adults, and training programs leading to more patient oriented teachers of medicine. None of these results would have been possible without the valuable support of the foundations.

I reiterate my support of the proposed legislation and hope that as a result of the hearings the subcommittee will recommend its passage.

Sincerely,

PAUL F. GRINER, M.D.,
Samuel E. Durand Professor of Medicine.

SAINT FRANCIS HOSPITAL,
Honolulu, Hawaii, June 23, 1983.

Hon. CECIL HEFTEL,
House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN HEFTEL: On June 27–28 the Oversight Subcommittee of the U.S. House Committee on Ways and Means will hold hearings to review the 1969 Tax Act's effect on private foundations. I appreciate the recent opportunity to speak with Ms. Laura Figueira about our views on these hearings and the importance of private foundation grantmaking to St. Francis Hospital.

We are particularly concerned over the negative impact which the excess business holdings provision of the 1969 Tax Act has had on one of our our major supporters: the W. K. Kellogg Foundation of Battle Creek, Michigan. This provision (Section 4943) on "excess" business holdings of private foundations limits the proportion of stock of any particular business enterprise which a private foundation, like Kellogg, may own.

This restriction has proven to be unnecessary, in our judgment, because of other provisions of tax and trust law and an unwarranted intrusion on the investment rights and responsibilities of foundation managers and trustees. For example, *no* other charities are so restricted in their portfolio management, and we don't believe private foundations should be either. This provision has also helped to effectively "kill" the birth of new major foundations since the 1969 Tax Act.

I'm taking the liberty of enclosing a background paper, developed by the Kellogg Foundation, on this issue.

Ultimately, of course, our concern is with the future grantmaking capability of foundations like Kellogg and with the best interests of philanthropy. The Kellogg Foundation has an outstanding record in terms of both asset growth and payout for charitable purposes. Yet it faces the prospect of forced divestiture under the existing excess business holdings provisions. Such a divestiture could drastically lower funds which the Kellogg Foundation has available to support St. Francis Hospital and other nonprofit organizations.

Your support of the Kellogg Foundation during the hearings, and relief for the Foundation from the excess business holdings provision, will be much appreciated. I would be pleased to answer any questions which you or members of your staff might have. We certainly appreciate your continued leadership and efforts.

Sincerely,

SISTER MAUREEN KELEHER, F.A.C.H.A.,
Chief Executive Officer.

[The background paper referred to is printed elsewhere.]

CITY OF ST. PAUL,
St. Paul, Minn., June 13, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR MR. SALMON: The cost of energy to heat northern cities like Saint Paul has become a major factor in the cities long-range economic viability. A number of years ago, the City of Saint Paul began to seek support from federal, state and local agencies to install a new central heating system to provide hot water heat to all of the buildings in downtown Saint Paul. Such a system has now been developed and, long-range, has the potential of providing efficient central heating to a geographic area far beyond the City of Saint Paul itself.

Because it was the City's hope that both for-profit and not-for-profit agencies would be able to participate in this new District Heating Program, and because many nonprofit corporations simply lack the financial capacity to finance their participation in improvements such as district heating, I asked the foundations and corporations in the metropolitan area to consider financially assisting these nonprofit corporations. Under the leadership of The Saint Paul Foundation, and with prompt and generous support from area foundations and corporations, a thorough study of all downtown buildings owned by nonprofit organizations was conducted. This study made it possible to determine which organizations could, if they choose, become a part of the District Heating Program.

The cost of this study, $97,000, was the first step that local foundations and corporations took in this district heating venture. Once it was determined which nonprofit facilities could cost-effectively participate in district heating, these same foundations and corporations jointly established a new fund in The Saint Paul Foundation, called the Community Reinvestment Fund. This Fund, currently having a market value of $2,400,000, will loan, at far less than market rates, sufficient dollars to make it possible for eligible nonprofit corporations to avail themselves of the new district heating system. The Fund is so designed that the nonprofit corporations receiving these "loans" will pay them back only from savings actually achieved as a result of using this new efficient energy service. Funds paid back will then be recycled to enable additional nonprofits to participate in the heating system as it expands in future years.

Clearly, this was an area in which leadership and support from The Saint Paul Foundation and other foundations and corporations was absolutely needed. The speed with which these foundations and corporations were willing to develop thorough information and subsequently provide additional assistance for this nontraditional charitable endeavor was remarkable. The collaboration of private and public agencies in this undertaking was extensive and essential. Indeed, without the help of the foundations and corporations of the Twin City area, the District Heating Program could not have proceeded.

It is my hope that the events narrated in this letter will be included in the matters considered during the hearings on foundations scheduled for June 27 and June 28, 1983. I would be pleased to provide additional information beyond what is enclosed with this letter, if you need it.

Sincerely,

GEORGE LATIMER, *Mayor.*

Attachments.

COMMUNITY REINVESTMENT FUND

LIST OF DONORS

	Amount
The Bush Foundation	$200,000
F. R. Bigelow Foundation	100,000
Dayton Hudson Foundation	250,000
The St. Paul Companies, Inc.	250,000
The Saint Paul Foundation	500,000
McKnight Foundation	500,000
3M Foundation	350,000
Northwest Area Foundation	500,000

LIST OF RECIPIENTS

Minnesota Museum of Art; Science Museum of Minnesota; Minnesota Public Radio/World Theatre; and Catholic Charities.

Central Park United Methodist; Central Presbyterian Church; First Baptist Church; Church of the Assumption; Saint Louis Church; Saint Mary's Church; and Christ Lutheran Church.

Bethesda Hospital; Saint Joseph's Hospital; and United Hospitals.

ST. PAUL PUBLIC SCHOOLS,
OFFICE OF THE SUPERINTENDENT,
St. Paul, Minn., June 13, 1983.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE ROSTENKOWSKI: I have been informed that the Oversight Sub-Committee of the House Ways and Means Committee has scheduled two days of hearings on private foundations. I understand the purpose for the hearing is to increase the Sub-Committee's knowledge of services provided by foundations at local levels. I suspect the Sub-Committee is also evaluating the public benefit which obtains as a result of foundation activity.

I would like to add my expression of appreciation for foundation activity in general, particularly as it relates to support for public schools and to the community foundation here in St. Paul, Minnesota. Over the years, the St. Paul Public Schools has received significant help in initiating several needed programs which have public benefit, which otherwise would not have been implemented. Several such programs have been assisted by our community foundation within the past two years. These activities have included support for:

1. St. Paul Technical-Vocational Institute—$25,000 over a one-year period for supplemental aid for TVI students. These funds were used to help students continue as students at TVI. Without the aid, students would have been forced to drop out, due to financial difficulties. The aid was applied to the purchase of books, to transportation to and from school, for lunches, etc. The aid resulted in a retention rate which was significantly high for the group receiving the aid.

2. Central Community Minority Education Project—$110,000 over two years to help improve the educational and career opportunities available to minority students through a coordinated community effort. The funds are being used to coordinate school and community agency service for the benefit of the minority students in the area. A final evaluation of the project has not yet been completed, but preliminary results are positive.

3. Multi-Cultural Arts Curriculum at the St. Paul Webster Magnet Elementary School—$8,000 over one year to increase the participation of community-based performing arts groups at the school, student participation with these arts groups, and access to master classes. We anticipate the project will become a curriculum model for multi-cultural arts curriculum in other schools in the district.

Enclosed are two pages from the Superintendent's Annual Report to the Board of Education for the school year 1982-83. These two pages list the assistance we have received for specific programs throughout the school system, which assistance has come from local foundations.

The public good which has been achieved with foundation assistance in St. Paul is significant. The foundation assistance to the St. Paul Public Schools is an excellent example of private foundations assisting public education to provide services for the public good.

I trust these few examples will assist you in recognizing the value of foundations' activities in local communities and will enable you to continue to support their ability to provide effective services for the public good.

Sincerely,

George P. Young,
Superintendent of Schools.

SPECIAL PROJECT GRANTS—FEDERAL PROGRAMS LISTING GRANT AUTHORITY, 1982–83

Program description	Grant amount	Program total
Computer Assisted Instruction Programmers—Math Department	4,200	4,200
Hartzell School Matching Fund	1,491	2,648
Arlington House Treatment & Shelter	16,179	131,279
Booth Brown House	10,834	75,939
Juvenile Horizons	2,420	77,016
New Connection Primary Treatment	7,379	72,567
Wilder Programs—Bush Memorial	8,270	180.753
Eisenmenger Teacher Aides	14,006	26,726
Wilder Programs—Eisenmenger Tutorial	133,831	280,610
Face To Face Health and Counseling	34,783	73,074
Children's Hospital	55,692	119,183
Huested Programs for the Handicapped	12,451	30,455
East Metro Vision Program	1,025	56,613
Special Education IMC	13,909	24,575
Study of Services to Emotionally Disturbed	10,388	15,580
Bridge View PTA Special Education	3,500	6,293
E. D. Goodwill	2,000	4,202
Elementary Low Incidence Special Needs	1,804	3,204
Secondary Low Incidence Special Needs	1,945	3,455
North End Playground Special Needs	839	1,490
Rutland Van	1,143	1,143
Teacher Advisor: Central	72,403	72,403
Community Involvement: Central	39,170	39,170
Staff Development: Central	93,000	93,000
Central Minority Education Project	61,000	61,000
Bridge	5,000	5,000
Action Learning for Gifted Talented	3,963	3,963
Guadalupe Area Project	14,628	17,813
Harding Band Uniforms	2,500	2,500
Merriam Park Intensive Day Treatment Program	46,634	82,028
CLIMB, Summer	516	1,259
St. Paul Open School	5,463	5,463
St. Paul Omnibus	383	383
Randolph Heights GLD	170	302
Community School Collaborative/Adm.	20,000	26,239
Community School Collaborative/LOGO	24,645	24,645
Program for Social Development-Murray	800	1,165
CLIMB	4,635	9,870
Como Hartzell	4,003	7,110
Crime Prevention Curriculum Project	3,119	3,119
Community School Collaborative/Literary	3,410	3,410
Total	740,121	1,667,437
Federal Programs Accountant	87,884	87,884
Alternative Homes	25,406	56,435
Directions For Youth	8,477	17,696
United Hospital Adolescent Psychiatric Unit	24,320	51,310
Wilder Program: Wilder/Bush	43,795	91,467
Project Explore Multi Products	7,300	7,300
WIN Vocational Services	15,643	29,940
Autistic Aide	3,264	5,865
Special Education Teacher Aide Services	364,881	912,203

SPECIAL PROJECT GRANTS—FEDERAL PROGRAMS LISTING GRANT AUTHORITY, 1982–83—Continued

Program description	Grant amount	Program total
Red School House—Secondary	89,055	113,463
Red School House—Elementary	34,217	55,684
Career Study Center	6,425	6,425
Adult Summer Skills '83	16,107	16,107
St. Anthony Park Extended Day	41,580	41,580
Daytons Bluff Extended Day	100,813	100,813
Evening High School	79,881	79,881
ESAA North End Magnet	44,775	44,775
Special Educ. Summer School Planning	5,702	13,045
Total	999,525	1,731,873

CITY OF SALEM, OREG.,
June 9, 1983.

MR. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I understand the Oversight Subcommittee of Ways and Means is holding hearings June 27 and 28 about the role of private foundations in American philanthropy. I do not know what legislation is being discussed, but I do want to comment on the unique value of foundation support in developing community programs. Permit me to describe one program that not only has worked well in Salem, but has been recognized nationally as a model for community self-help.

We have a very extensive and strong program of citizen participation in Salem. Faced with rapidly shrinking tax dollars to meet their needs, in 1979 neighborhood group began working on pilot self-help projects in two areas, part development and crime prevention. One neighborhood in East Salem constructed a park and a South Salem neighborhood developed a crime watch program in partnership with the City. While each project was very successful, we did not have the needed funds and staffing to extend these projects to our other 15 neighborhoods in a timely manner.

Fortunately, the Gannett Foundation recognized that we had two very valuable model programs that should be available city-wide. In 1982 the Foundation awarded a $50,000 grant to Salem Neighborhoods, Inc. (SNI) to further develop the self help concept and assist groups with organizing and fund raising throughout the Salem area.

The SNI Board, composed of a representative from each of our 17 neighborhoods, created the Self-Help In Neighborhoods Everywhere (SHINE) program. SHINE was developed and managed by its own citizen volunteer board. SHINE took over the role of providing support services to neighborhoods and other groups initiating self-help projects. SHINE provides organizational assistance, processes seed grants, assists with fund raising activities, provides training and program coordination and assessment.

In its first year of operation, SHINE accomplished the following: established a center, equipped through donations from local businesses and run by volunteers; trained 2,839 volunteers in crime prevention techniques, with a projected resident coverage of 10,000 by December of 1982; and provided financial assistance in the form of matching or seed grants to projects, including Sumpter Park, Safety Town, a safety program for children, median strip maintenance and began review of proposals for bench construction, bush shelters, a children's garden, walkway construction and a jogging trail.

The first year of the SHINE project was so successful that Gannett Foundation awarded an unprecedented $50,000 grant to fund the program this year. Thanks to their generosity Salem has a very effective volunteer organization responsible for five park projects, landscaping and walkway projects, and a very successful city-wide neighborhood crime prevention program. These projects and the tremendous volunteer commitment they represent were key factors in our being awarded an All-American City title in January.

It is my hope that this letter will be entered as an official part of your hearing record. If I can be of any further assistance, I would be pleased to do so.

Sincerely,

SUE HARRIS, *Mayor.*

THE SALVATION ARMY,
Wenatchee, Wash., May 24, 1983.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight,
Committee on Ways and Means, House of Representatives.

SIR: For many years The Salvation Army in Wenatchee, Washington has been aided beyond measure as a beneficiary of the A.Z. Wells Foundation.

The annual grants have brought a sense of stability and continuity to the many and varied programs we conduct.

The grants have helped us to provide year round programs for young people who do not feel comfortable or cannot afford other youth programs. (in our community.)

We are able to provide visitors and counselling to the elderly as well as to meet the ever increasing emergency needs of an area with 16 percent unemployment and a large number of migrant individuals and families.

I write with a feeling of great concern that the intent of A. Z. Wells might be subverted. I feel it to be essential that Wells and Wade Hardware and Wells and Wade Fruit, as well as other endowment type trusts, be allowed to continue under trust management without undue intervention.

I believe that we and other beneficiaries, over a period of time, suffer if this is changed.

Thank you for the opportunity to express my personal feelings.

May God bless you and yours.

Sincerely,

HAROLD WELLS,
Major, Commanding Officer.

STATEMENT OF THE SAN DIEGO COALITION FOR RESPONSIVE PHILANTHROPY

FOUNDATION PROFILE QUESTIONS

(A) What role do private foundations play in private philanthropy?

Originally, foundations were set up to promote philanthropy. As a U.S. Treasury Department report states, "Private philanthropic organizations can be uniquely qualified to initiate thought and action, experiment with new and untried ventures, dissent from prevailing attitudes and act quickly and flexibly."

Foundations have a particularly important role within philanthropy, the report states, as a "powerful instrument for the evolution, growth and improvement in the shape and direction of charity." Foundations can perform this role, it says, primarily because their funds are "frequently free of commitment to specific operating programs."

In the past, foundations have performed as innovative leaders, thus gaining a reputation as progressive charities. But government funding increased in areas such as health and education over the last several years, foundations have not continued to support new ideas and institutions. In fact they now typically give to traditional, established and noncontroversial organizations.

Vernon Jordan, President of the National Urban League agrees: "Foundation grants have, if anything, gone to the traditional institutions and not the experimental. They have gone to the powerful and not to the powerless. They have encouraged the status quo and have not encouraged social change."

In rare cases where foundations have given money to community groups and agencies promoting new concepts, results have been undeniably positive. In 1979, for example, the Youth Project, a national foundation based in Washington, D.C., granted more than $2 million to community agencies to resolve significant social, political and economic problems through grassroots organizing.

The Jackson Gray Panthers in Mississippi were among the groups the Youth Project supported. The Gray Panthers is an advocacy group that seeks to correct injusticies suffered by more than 12,000 senior citizens who live in nursing homes. More than 50 percent of Mississippi residents 65 years and older exist on incomes below the poverty level. During 1979, the Gray Panthers regularly monitored nursing homes managers and conducted more than 30 workshops on the rights of nursing home residents. Increased contact with both nursing home residents and managers resulted in the filing of more than 150 legal complaints against nursing home officials in 10 homes, and significant improvements in conditions.

Even in small amounts, foundation endowments can make a tremendous difference to community agencies. In some instances donations as small as $2,000 or $3,000 have enabled agencies to continue serving their communities.

However, in spite of the assistance foundations have the capability to give, as a whole they have not been the social movers they might have been after the enactment of the 1969 Tax Reform Act. The government has been the leader in civil rights, aid to the poor, etc. Most foundations give to very traditional well established institutions and organizations. As a result, the foundations are not responsive to new and changing needs in the community. Programs for women and minorities, as an example, get little funding from foundations. With the continued loss of government funds we are concerned that social reforms, civil rights programs and community based services will not be continued by the foundations.

This concern might be addressed if foundations were accountable to the public for the expenditure of their funds. Since they are not accountable many community needs for services (especially for minorities, women, seniors, housing for the poor, youthful offenders, legal aid) are not met.

(B) How are private foundations responding to the President's call for increased volunteerism and private sector initiative in light of reduced Federal spending?

A question of great concern to us is whether or not foundations will be able to answer the President's call for increased voluntarism in the face of continued budget cuts to non-profit organizations. For the last two years foundations have said in newspapers, magazine articles, professional journals and interviews that they cannot make up the difference in lost government funds.

In San Diego, foundations have not responded to increased grant requests in any major way and many small non-profits have closed their doors while larger organization have suffered severe cutbacks. More non-profits will be closing down in the future. Meanwhile the needs that these agencies and programs served in the community still exist. Very few foundations have changed their giving priorities to meet the needs of non-profits losing their government funds. It seems that the President's views on what foundations can or cannot provide are unrealistic.

Foundations continue to list "seed fund" focus as a major program focus for funding grants. In the past this program distinction was made with the assumption that government funds would be available to maintain that new program permanently. As government funding declines foundation administrators need to recognize the need for maintenance funds as well as start-up costs.

Foundations need to be accountable to the public for the way they spend their charity dollars because of their social responsibility and for tax reasons. The nature of the trust agreement that is the legal basis of foundations requires trustees to be responsible to both donors and beneficiaries. In the case of foundations, the beneficiary is the public. Furthermore, John Nason of the Council on Foundations, has said, "If (money) had not been set up in a tax exempt foundation, a substantial portion of it—as much as 70 percent in fact—would have found its way into government coffers through the application of income or estate and inheritance taxes." In 1979, the U.S. Treasury lost $7.3 billion in taxes by allowing people to deduct gifts to charity. If that money had been available to the government to spend, it would have been subject to a budget process and then open to public debate on how it should be spent.

In an attempt to improve foundation accountability and make foundations visible to those who needed an alternative funding source, the Community Congress of San Deigo—a coalition of more than 60 human service organizations and 300 individuals—began to develop a directory of foundations in October 1978. Before the directory was published in 1980, only six of the 125 foundations had been listed in national and state directories.

(E) Who are recipients of the charitable distributions of private foundations?

Foundations across the country donate about $2.2 billion annually. In San Diego County, however, it was not known until recently how much money foundations bestow and to whom. In an era of diminishing public financial support for a vast range of human services this information is important. Three aspects of foundations were examined: their giving patterns, their internal structures and their accountability to the public. It was found that San Diego County foundations donated a total of $3.7 million in 1978–79. Of that money:

Only 2.1 percent went to ethnic and racial minority organizations even though minorities make up more than 20 percent of San Diego County's population;

24 organizations received 58 percent of local foundation funds although there are more than 1,000 non-profit agencies in San Diego County;

More traditional, well-established organizations received over 50% of the funds allocated to the social services and welfare area;

Internal structure/boards

The vast majority of S.D. County foundations have no professional staff, in fact most of the staff consisted of lawyers, bank trust officers, business people and their secretaries;

Foundation staff were not professionals in foundation work but administered the foundation in addition to their regular occupations;

Foundation boards showed little apparent minority representation;

Decision-Making

Rarely was there evidence of efforts to survey emerging and existing community needs nor was a substantive mechanism utilized to make decisions from any common pool of needs assessment data or interpretation;

Accountability

Roughly 90 percent of S.D. County foundations are not listed in either of the two major California foundation directories;

Proposals are seldom formally solicited from the S.D. community; and

Foundations do not generally support community representation on boards as a viable way to achieve greater publicness.

G. Administration of the Statutory Rules by the IRS

(b) In what ways should the 990–PF, Return of Private Foundations be improved?

There exists two ways in which to obtain accurate information regarding foundations: annual reports and 990–PF forms. Only 2 percent of S.D. County foundations publish annual reports. Foundations should at the very least be obliged to fill out their 990's completely. Many foundations ignore IRS requirements to provide full information on the 990's. In addition, the 990's are difficult to obtain, expensive and always out-of-date. Non-profit organizations need up-to-date, accessible and accurate information from foundations. Often the 990 is the only source of such information. Many foundations do not have staff to answer inquiries or to even give notice of acceptance or rejection of a proposal. It can take years to find out if a proposal has been rejected or accepted by a foundation.

RECOMMENDATIONS

1. The foundation community and the Reagan Administration should develop joint policies for meeting the needs of citizens who are losing services because of budget cuts to non-profit organizations.
2. Foundations should examine their given priorities and determine whether or not they are meeting changing local or national needs especially in regards to under-served groups, i.e., minorities, women, senior citizens.
3. Foundations should be made accountable to the public for the expenditure of their funds through increased information given on the 990–PF reporting forms.
4. Foundations should be required to completely fill out their 990's.
5. Foundations should be required to respond to inquiries and proposals in a reasonable and timely manner.

Statement of Joe A. Williams, President, on Behalf of Sand Springs Home, Tulsa, Okla.

PURPOSE OF STATEMENT

This statement is submitted by the Board of Trustees of Sand Springs Home, a private foundation located in Sand Springs, Oklahoma, established for the operation of a Home for needy and neglected children and a Widows' Colony for needy widows with dependent children. It is prepared in accordance with Press Release 5 dated Tuesday, May 3, 1983, issued by the Subcommittee on Oversite, Committee on Ways and Means, U.S. House of Representatives in which the subcommittee announced hearings on private foundations. This written statement will address several of the "foundation profile questions" contained in Press Release #5 and will specifically address the divestiture requirement for business holdings as it affects Sand Springs Home.

HISTORY OF SAND SPRINGS HOME

Sand Springs Home was founded by Charles Page on June 2, 1908. On August 9, 1912, it was incorporated under the laws of the State of Oklahoma. At the time the Home was founded there was no Federal income tax. The Home was originally formed for the purpose of caring for orphans. In 1914 however, recognizing that there was a need for a facility which would provide a place for needy widows to raise their children, there was formed a Widows' Colony. These activities have continued until the present time. At this time the Home has 29 dependent children in the Home and in the Widows' Colony there are 120 widows with a total of 266 dependent children.

Sand Springs Home since its formation has expended in excess of $33 million for charitable and philanthropic purposes and has cared for a total of more than 918 dependent children, for whom the Home has provided all necessities of life, and more. Additionally, substantial care has been provided to more than 3,000 widows and more than 8,000 dependent children in the Widows' Colony.

The Home is unique since Mr. Page, recognizing the need for such organizations at an early date, provided the organization with an endowment which has resulted in its never having to ask that the public or the government make contributions or provide funds. However, what would then be considered a virtue is now a detriment, since if the Home had requested additional funds through the years from the public for its support, it would undoubtedly have been able to qualify as a public foundation. By leaving the funds of the community available to be used for other charitable activities, the Home now (since 1969) finds itself in the position of being classified as a private foundation.

ADDITIONAL INFORMATION CONCERNING THE SAND SPRINGS HOME

Children are entrusted to the care of Sand Springs Home by order of the Oklahoma State District Court which charges the Home with the duty of the care, maintenance and education of the children. Widows and their children are admitted to the Widows' Colony under rules and regulations authorized by Sand Springs Home, but the children remain under the jurisdiction of their mothers. Prior to admission all such widows are determined to be in need of the facilities and services provided by the Colony.

Personal assets of children in the Home are held in trust under guardiaships established through the Probate Division of the District Court of Tulsa County, Oklahoma. Individual bonded guardians are appointed by the Court, and all personal assets, including Social Security, Veteran's benefits, etc., are impounded in the duly established guardianships which are administered under the watchful eye of the above-mentioned Court until its approval of the final distribution by the guardian of the assets, and all increments accruing thereto, to said children on reaching his or her majority. No personal funds of any child are ever accepted into or commingled with the accounts of the Sand Springs Home. The Home's Legal Department protects each child in effecting settlement of claims for death, insurance, Social Security and Veteran's benefits from which such guardianship assets customarily accrue.

The Home has made available to the Public School System of Sand Springs, the City of Sand Springs, and to the various churches of Sand Springs and immediate area, lands belonging to it, for as long as such lands are occupied and used for educational, recreational, or religious purposes, as the case may be.

The Home's assets consist, in addition to the land and buildings directly utilized for the carrying out of the exempt activities, of large tracts of land in the Sand Springs, Oklahoma, area, which are increasing in value, as neighboring Tulsa, Oklahoma, expands, stock in several small but prosperous wholly-owned companies, oil properties, and investments in governmental obligations, marketable securities, and certificates of deposit. It is difficult and expensive to assess the total value of the assets; however, the total endowment (exclusive of property used directly in the charitable activities) is substantial and at the present time at a minimum this value exceeds $30 million. Attached hereto as an exhibit is a Schedule of Operations of Sand Springs Home during the period 1973 through 1982.

PROBLEMS OF THE SAND SPRINGS HOME UNDER SECTION 4943

As this Subcommittee is aware, section 4943 of the Internal Revenue Code limits the percentage ownership of a business enterprise by a private foundation and all disqualified persons and taxes any excess holdings that are not divested within a required period of time. Section 4943 requires Sand Springs Home to divest itself of control of four (4) wholly-owned subsidiary corporations by selling at least 50 percent of the stock of such corporations by May 26, 1989 and further to reduce its ownership interest to 35 percent by May 26, 2004. Code section 4943(c)(4)(D). Sand Springs Home owns four (4) subsidiary corporations which are covered by the provisions of section 4943. Those corporations are Sand Springs Railway Company, Sand Springs Townsite Company, Sand Springs Oil and Gas Company and Woodland Memorial Company. Sand Springs Railway Company is principally engaged in providing rail freight services between Tulsa and Sand Springs, Oklahoma. Sand Springs Townsite Company is principally engaged in the renting and selling of residential and commercial real estate including receiving fees for real estate services rendered on behalf of the Sand Springs Home, its parent company, and affiliates. The Sand Springs Oil and Gas Company is principally engaged in the development and production of crude oil and natural gas resources. The Woodland Memorial Company is principally engaged in the sale of burial lots and operation of a cemetery in Sand Springs, Oklahoma. These same persons who serve as members of the Board of Trustees of Sand Springs Home also serve as the management and Board of Directors for each of these four (4) corporations. The compensation of the Trustees of Sand Springs Home is set by State court order and the Trustees receive a fixed compensation for all of their services including services performed for and on behalf of the subsidiary corporations.

Each of the four corporations serves an important function to the Sand Springs Home. During the last ten years, combined dividends paid to the Home by the four (4) subsidiary corportions totaled $2,542,375.00. Sand Springs Townsite Company serves as a managing arm with regard to much of the real estate owned by the Home. Sand Springs Railway Company is a vital commercial link between the small town of Sand Springs, Oklahoma and the larger Tulsa, Oklahoma. It is the only rail link that serves the industrial complex between Sand Springs and Tulsa. In addition, the four (4) subsidiary corporations provide training and employment opportunities not only for citizens in the community of Sand Springs but in particular for some residents of the Home and Widows' Colony.

The Board of Trustees of Sand Springs Home is presently dedicated to a long term expansion of the Widows' Colony. Presently the Widows' Colony contains 120 units, and six (6) units are under construction. Each unit supports a widow and two or more dependent children. The planned expansion would double the size of the existing Colony and should increase the charitable load of the Home from 120 mothers to 240 mothers and from approximately 266 dependent children to approximately 500 or more dependent children. In order to make such a large commitment to the care of the poor and needy, it is essential that the Home Maintain reliable investments and assist in maintaining the economic viability of the community of Sand Springs, Oklahoma. A sale of the four (4) important subsidiary corporations will seriously detract from the Home's ability to complete and/or maintain such objectives.

If the provisions of § 4943 remain unaltered, Sand Springs Home will be required to dispose of its stock in the four subsidiary corporations. The four subsidiaries were formed on the following dates: Sand Springs Railway Company 1911; Sand Springs Townsite Company 1928; Woodland Memorial Company 1933; and Sand Springs Oil and Gas Company 1950. Disposition of the subsidiaries, in the opinion of the Home, will result in a forced sale which will yield less than full value to the Home. That being the case, the Home, and the ultimate charitable beneficiaries, will receive less benefit in future years from the proceeds of the sale of the corporate stock than would be received if the Home were allowed to continue to own the corporations.

The legislative history with regard to § 4943 indicates that Congress was concerned with two main problems. One was that many charities were acquiring numerous businesses and corporate subsidiaries. The legislative history cites examples of private foundations owning as many as 45 business corporations. Secondly, Congress was concerned about the foundation managers directing more of their attention to their business duties than to the duties of their charitable endeavor. Concern was also voiced over unfair competition where businesses were owned by charities while other businesses were required to pay taxes. To deal with these problems, Congress concluded that it was desirable to limit the extent to which a business may be controlled by a private foundation.

None of the reasons expressed by Congress appear relevant to the Sand Springs Home ownership of its subsidiary corporations. The corporations at times provide employment opportunities for children who are raised in the Home and Colony, each of the subsidiary corporations is a taxable corporation and pays income tax on any profits it realizes, and due to the interrelationship of the Home and the subsidiary corporations and their joint role in the Sand Springs Community, there is no danger of the Home's trustees failing to devote their full time and attention to the charitable objectives involved. One of the five trustees spends full time managing the charitable functions of the Home on a daily day to day, hour to hour basis. All trustees hold weekly meetings, periodic special meetings as necessary, and are on a daily basis involved in the charitable functions. In summary, it would appear that the purposes for the enactment of § 4943 are not germane to the circumstances of Sand Springs Homes and it is suggested that legislation exempting the Home from the disposition requirements would be appropriate with regard to these specific subsidiaries.

RECOMMENDED LEGISLATION

It is requested that Sand Springs Home be relieved of the disposition requirements of § 4943 by narrowly defining the Home and the four subsidiary corporations referred to above. An example of the method of accomplishing this objective is H.R. 4577, 97th Congress, 2d Session. Such legislation would have no revenue effect and would simply allow Sand Springs Home to continue to own controlling interest in the four subsidiary corporations which it now owns and would allow them to be used for the direct benefit of its charitable beneficiaries and for the good of the Sand Springs community as a whole.

FOUNDATION PROFILE QUESTIONS

In Press Release No. 5 the Subcommittee requested information concerning various profile questions. Sand Springs Home herewith provides information with regard to those questions as follows:

(A) What role do private foundations play in private philanthropy?

Answer. In the Sand Springs, Okahoma community, if not the entire State of Oklahoma, Sand Springs Home, as a private foundation, plays a major role in private philanthropy. The Home's expenditure in its fiscal year 1982 on nearly $1,400,000.00 as direct expenses carrying out its charitable activities most assuredly ranked Sand Springs Home as one of the largest private philanthropic endeavors in Oklahoma. At the present time the Home and the Widows' Colony is providing care for 413 persons in a commmunity of approximately 14,000 population.

(B) How are private foundations responding to the President's call for increased voluntarism and private sector initiative in light of reduced Federal spending?

Answer. As discussed above, Sand Springs Home presently plans to double the size of the Widows' Colony from 120 units to 240 units.

(C) What are the sources of funding for private foundations?

Answer. The sources of funding for Sand Springs Home come 100 percent from its endowment left by the late Charles Page.

(D) What philanthropic activities are private foundations undertaking?

Answer. The philanthropic activities of Sand Springs Home are the long term care of orphans, needy and dependent children, underprivileged and needy widows and their dependent children.

(E) Who are recipients of the charitable distributions of private foundations?

Answer. The recipients of the charitable distributions of Sand Springs Home are the children and needy widows who are residents at the Home and Widows' Colony.

(F) What are private foundations' payout rates for qualifying charitable distributions?

Answer. Sand Springs Home, due to legislation in 1978, has a reduced payout rate requirement of 3⅓ percent. Code § 4942(J)(5). The Home, however, has exceeded that requirement regularly, and presently has made *excess* qualifying distributions of over $400,000 during the last three fiscal years.

(G) What types of assets do private foundations have, and what is the rate of return on each type of asset?

Answer. The assets of the Home are as described in the answer to question (H) below. The ratio of the Home's investment income to the fair market value of its assets for the year ending June 30, 1982 was approximately 11.5 percent.

(H) What types of investments do private foundations engage in, and what investment policies guide their decision-making regarding investment selections?

Answer. Sand Springs Home limits its investments to a sound portfolio of certificates of deposit, marketable securities, government securities, real estate and its four subsidiary corporations.

(I) What portion of the qualifying distributions of private foundations represents administrative expenses, particularly trustee compensation?

Answer. For fiscal 1982 Sand Springs Home had qualifying charitable distributions of $1,386,182.00. Of that amount approximately $158,000 constituted administrative expenses, of which $105,814 constituted trustee's compensation.

(J) What has been the effect of the Tax Reform Act of 1969 on the operations, vitality and growth of private foundations?

Answer. The Tax Reform Act of 1969 has restricted the ability of Sand Springs Home to make investment and growth decisions with regard to its four subsidiary corporations. This is caused by the requirement to dispose of those corporations, or to dispose of 50 percent of the voting stock of such corporations, by the year 1989. With such limitations it is virtually impossible to make long range investment decisions which are so needed in order to provide long term care for the type beneficiaries administered to by Sand Springs Home.

(K) Is avoidance of private foundation status a factor that is considered in deciding upon the format for philantropic activities? If so, why?

Answer. The Sand Springs Home Board of Trustee's is not in a position to decide upon the format of its philanthropic activities. The Home was established in 1908 and has operated under its governing instruments since that time. The members of the Board of Trustees are, however, aware that other charitable endeavors, when formed, attempt to avoid private foundation status if possible due to the rigorous requirements and limitations provided by the Tax Reform Act of 1969. Such considerations do not, however, affect the Home.

(L) What type of public disclosure and accountability are afforded by private foundations, and how helpful is it to potential grantees and to the public in general?

Answer. Public disclosure and accountability provisions of the Tax Reform Act of 1969 have little, if any, effect on Sand Springs Home since the recipients of the benefits of the Home are those persons who reside from time to time at the Home and the Widows' Colony.

CONCLUSION

The Sand Springs Home hopes that the information contained in this written statement is helpful to the Subcommittee in analyzing present law with regard to private foundations. Many aspects of the Tax Reform Act of 1969 insofar as they affect private foundations are good. Unfortunately, the law effects not only private foundations that needed changes in their method of operations, but private foundations which do nothing but benefit the public and carryout their charitable activities. Some of the effects of that law are obviously adverse with regard to certain of those private foundations. It is the strong belief of the Sand Springs Home that the disposition provisions contained in § 4943 will work a hardship on Sand Springs Home and result in a reduced endowment available for use by the needy beneficiaries of the Home and Widows' Colony. It is requested that legislative relief be granted to Sand Springs Home and that it be allowed to retain these four corporate businesses which it has so long held and operated for the benefit of the children and widows of the Home.

Sand Springs Home and its Board of Trustees would like to take this opportunity to express our appreciation to this Subcommittee, the Committee on Ways and Means, and the House of Representatives for its attention to these matters.

SCHEDULE OF OPERATIONS OF SAND SPRINGS HOME
(in Dollars) 1973-1982

Year ending June 30	Total Revenue(1)	Charitable Expenses	Non-Charitable Expenses	Total Expenses	Excess (Deficit) of Revenues Over Expenses	Non-Charitable Assets at Fair Market Value(2)	Charitable Assets at Cost
1973	1,674,100	859,057	219,142	1,078,199	595,901	Not Available	1,435,081
1974	2,274,441	964,628	98,032	1,062,659	1,211,782	24,487,987	1,827,376
1975	2,720,339	1,066,713	76,536	1,143,249	1,577,090	24,688,205	2,319,476
1976	2,103,155	2,870,229	261,553	3,131,782(3)	(1,028,627)	25,571,492	2,572,248
1977	2,893,879	2,371,632	332,687	2,704,319(4)	189,560	27,873,577(5)	2,724,336
1978	1,796,249	926,106	334,829	1,260,935	535,314	25.708,455(3)	2,886,336
1979	2,939,895	759,376	520,726	1,280,102	1,659,793	28,575,702	3,018,856
1980	3,627,268	807,959	525,369	1,333,328	2,293,940	27,277,704	4,451,876
1981	4,476,640	1,160,931	714,869	1,875,800(6)	2,600,840	28,734,307	4,530,699
1982	6,036,937	1,386,182	532,648	1,918,830(7)	4,118,107	30,287,827	4,655,057

(1) Includes equity in net income of subsidiaries.

(2) Value of Land, Subsidiaries and certain other assets are based on appraisals and agreement per IRS audit in 1978. Liquid assets are valued annually. FMV's of non-liquid assets have not been redetermined since 1978 in accordance with Treasury Regulations. Assets are being appraised for the year ending 6-30-83.

(3) Includes $2,000,000 program related expenditure for construction of a Home for Widows, Guthrie, Oklahoma. The expenditure was in the form of a loan which was forgiven in year 6-30-78, and such forgiveness is reflected in the "FMV of Non-Charitable Assets" column for 6-30-78.

(4) Includes $1,500,000 set aside for capital improvements actually segregated on the books of the Home, and expended (or to be expended) over the following five years. Such amounts do not appear as expenses in the subsequent years when actually disbursed.

(5) In 1977, effective for the fiscal year 6-30-77, the Home transferred property with a book value of $1,477.475 to the Charles Page Family Care Charitable Remainder Annuity Trust, pursuant to Court order. The members of the Board of Trustees of the Home serve as Trustees of such Trust. The Trust pays certain annuities to beneficiaries of Charles Page, the founder of the Home. Upon the death of the last surviving annuitant, all undistributed income and principal of the Trust revert to the Home.

(6) Includes $105,000 set aside for capital improvements actually segregated on the books of the Home, and expended (or to be expended) over the following five years. Such amounts do not appear as expenses in the subsequent years when actually disbursed.

(7) Includes $200,000 set aside for capital improvements actually segregated on the books of the Home, and expended (or to be expended) over the following five years. Such amounts do not appear as expenses in the subsequent years actually disbursed.

STATEMENT OF JOHN G. SIMON, AUGUSTUS LINES PROFESSOR OF LAW, YALE LAW SCHOOL, CHAIRMAN, YALE PROGRAM ON NON-PROFIT ORGANIZATIONS

A PROPOSAL FOR RESOLVING THE EXCESS BUSINESS HOLDINGS DILEMMA

Introduction

As the hearings before the Subcommittee on Oversight have made quite clear, the phenomenon of what the law calls "excess business holdings" -- roughly speaking, the ownership of corporate control stock by a foundation alone or in conjunction with certain related persons -- presents the Congress with a dilemma. On the one hand, the Congress, speaking through its tax writing committees, expressed the view in 1969 that a foundation's participation in corporate control could impair the quantity and quality of its charitable performance and unfairly injure businesses competing with the controlled company. On the other hand, the statutory response to these problems, the divestiture requirement of Section 4943 of the Internal Revenue Code, is viewed by the affected foundations and also by some other observers as a threat to the financial health and diversity of the foundation field, the larger charitable universe, and the small business sector of the economy. The purpose of my statement is to suggest a resolution of this dilemma that honors and accomodates both of these perspectives.

Concerns About the Impact of Section 4943

Turning first to the concerns about the impact of Section 4943, they may be categorized as follows (with some extrapolation on my part):

1. Section 4943 may result in disposition of foundation-owned corporate control stock at "fire sale" prices, causing two kinds of dislocation:

(a) If there is a windfall for the purchaser, at the foundation's expense, it represents a governmentally induced subsidy flowing from the (philanthropic) seller to the (non-philanthropic) buyer -- a transfer of resources that the Congress could not have intended.

(b) "Fire sale" pricing could interfere with the efficiency of the capital market by preventing it from setting security prices in accordance with a bargain between a willing buyer and a willing seller. Such below-market security prices may attract capital to the "fire sale" transactions and thereby shrink the capital available to other small businesses seeking financing for start-up or expansion purposes.*

2. Section 4943 may bring about a sale by the foundation of its corporate control stock to a chain or conglomerate purchases, with these results:

(a) The sale to a larger enterprise may reduce the diversity of corporate ownership; such an increase in concentration of ownership takes on extra meaning where it involves a newspaper or television station or other organ of communication.

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*It is not at all clear that extending the 5-year deadline for disposing of post-1969 receipts of excess business holdings -- although a useful measure -- will solve the "fire sale" problem. The seller remains an unwilling seller -- a fact that probably affects the terms of trade.

(b) Transfer of the enterprise to non-family-related ownership would appear to contravene the Congressional policy favoring retention of family business control and could also withdraw jobs and economic activity from a local community.

3. Section 4943 may discourage the flow of funds into the foundation field. As stated by the Impediments Committee of the President's Task Force on Private Sector Initiatives (Rep. Conable, Chairman), "Faced with the prospect of a forced sale, many potential donors simply decide against making the gift of closely held stock to a foundation." In such event, the stock goes instead to a public charity, or remains within the family, or ends up in a public distribution or in a merger (depending, often, on estate-planning imperatives). The potential dislocations are these:

(a) Such a shift in dispositive patterns would restrict the foundation "birth-rate," particularly among the larger foundations, where excess business holdings are proportionately more prevalent than among smaller foundations. Reduced entry into the foundation field would not only limit the fiscal capacity of the foundations at a time of increased reliance on private funding, but also shrink the number and variety of financing windows open to new ideas and programs -- or to older values and traditions.

(b) If, for want of a foundation vehicle, the potential donor decides not to give the control stock to charity at all. total resources available to the nonprofit sector may be reduced.

(c) If the stock is given to a public charity instead of a foundation, there may be a loss in the government's ability to police the practices about which Congress was concerned, because of the reduced level of reporting, regulation and oversight of public charities as compared to foundations; indeed, churches are not even required to file any federal returns.

4. Section 4943 imposes a limitation on the allocational freedom of men and women whose wealth is tied up in an ongoing business, as compared to individuals with more liquid forms of property; the former group will find their charitable options more circumscribed in the light of the restriction imposed by Section 4943.

I have used the word "concerns" to characterize the points made above, because. with the possible exception of the fourth point, they are not grounded in a solid base of empirical information. A few foundations have testified about the difficulty they face in obtaining adequate value for their excess business holding or about the prospect of finding only a chain for a buyer, but the general situation has not been surveyed in any study of which I am aware. With respect to the third point. Section 4943's impact on the flow of funds into the foundation field is one of the subjects of a major study now being launched by the Council on Foundations and the Yale Program on Non-Profit Organizations, but results will not be available for some time. (Even the trend in foundation "birth-rate" is a subject of some dispute: new Treasury data suggesting a recent spurt in foundation births appear to be inconsistent with other trend data and will require further examination and reconciliation.)

Despite the lack of general empirical support, the concerns -- perceptions of risk -- listed above are sufficiently plausible to deserve Congressional attention. Our general knowledge of distress-sale dynamics, of the tendency toward concentration of ownership (including media ownership), and of incentives and disincentives affecting charitable giving lend threshhold credibility giving to each of these perceptions of risk. Moreover, these concerns all involve varieties of dislocation often associated with governmental intervention; our general knowledge tells us that there are often destabilizing side-effects that flow from major intervention, governmental or otherwise, into any form of economic, political, biological or ecological system. For example, "radical" surgery, or the intrusion of man-made structures into a beach or a marsh. or the toppling of a foreign regime, or an antitrust divestiture decree -- each of these interventions can cause secondary but serious systemic dislocation. Of all the regulations imposed on the foundation "industry" by the Tax Reform Act of 1969, Section 4943 -- forcing divestiture of one important category of foundation property -- most closely approximates a major intervention of the kind listed above.

Concerns About Foundation Participation In Corporate Control

Of course, not all major interventions are to be condemned because of their side effects. "Radical" surgery is often the only life-saving course; a beach or a marsh may have to be altered to serve vital public needs; foreign interventions receive widespread approval in crisis situations; and, in our case, too, the claimed dislocations attributed to Section 4943 would be easier to accept if such intervention were the only way to meet the regulatory objectives. The question then becomes: Are there less drastic alternative avenues that one could pursue to achieve these objectives? Focusing on the Congressional objectives in enacting Section 4943, we encounter three concerns about foundation participation in corporate control, set forth in the following passage from the 1969 House Ways and Means Committee report:

> [1] Those who wish to use a foundation's stock holdings to retain business control in some cases are relatively unconcerned about producing income to be used by the foundation for charitable purposes. [2] Even when the foundation attains a degree of independence from its major donor, there is a temptation for the foundation's managers to divert their interest to the maintenance and improvement of the business and away from their charitable duties. [3] Where the charitable purposes predominate, the business may be run in a way which unfairly competes with other business. To deal with these problems, your committee has concluded it is desirable to limit the extent to which a business may be controlled by a private foundation. [H. Rept. No. 91-

413, 1969-3 C.B. 200, 218; numbers in brackets have been added.]*

As in the case of the concerns about the impact of Section 4943, no comprehensive body of reasonably current data is available to support the three Congressional concerns about corporate control. The 1965 Treasury Department Report on Private Foundations recited several cases of no-dividend or low-dividend corporate control stock owned by foundations (pp. 33, 35, 39-40), but no overall data to compare the income productivity of control stock compared to other foundation holdings.* The 1965 Treasury Report provided not even anecdotal evidence to support the claim of "neglect" of charitable duties because of preoccupation with business operations (p. 35); indeed, if one examines the past and present roster of foundations with excess business holdings -- including those which presented testimony before the Subcommittee on Oversight -- one encounters some of the most vigorous and committed grant-making institutions in the land. Finally, the 1965 Treasury Report offered only one illustration -- ambiguous in its implications -- to support the claim of competitive injury ~~inflicted~~ on businesses not owned by foundations (pp. 33-34); as Russell G. Mawby notes in his Statement, no new examples have been cited since 1969 despite the continued presence of excess business holdings under transition rules.

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*The Senate Report gave the same reasons, with immaterial language changes. S. Rept. No. 91-552, 1969-3 C.B. 423, 449-50. In his recent Statement to the Subcommittee, Assistant Secretary Chapoton refers to a fourth concern (also expressed in the 1965 Treasury Department Report on Private Foundations):

> "The possibilities for conferring private benefit through a controlled business are numerous and in many cases very subtle. We do not believe it is possible to draft a statutory prohibition of all possible acts of self-dealing involving a foundation controlled business."

In the absence of any supporting examples, and in view of the failure of the Congressional committees to adopt this rationale in their 1969 reports, I will limit my comment on this point to two observations. First, foundations that invest in wholly independent, non-controlled companies will find themselves in roughly the same position -- at the mercy of possible "subtle" manipulation by corporate insiders. It is a risk of corporate life that Section 4943 cannot extirpate. Second, the "private benefit" that may accrue in subtle ways is a fact of charitable life as well. Consider the rewards that attends big giving -- the publicity, the social or commercial acceptance, the deferential or preferential treatment from the donee institution, and the hope for salvation as well. As compared to these private benefits, are the benefits to which Mr. Chapoton refers significantly more objectionable? And, if so, are they sufficiently noxious to be subject to policing at the Federal or State levels? Of course, contribution of control stock to a foundation often confers personal benefit by facilitating retention of family control over a business enterprise, but, as already noted, this form of private advantage is consistent with Congressional policy.

Yet, as in the case of the concerns about the impact of Section 4943, the concerns about corporate control participation are plausible --or at least. two of them are. As to a third, the distraction claim, the logic escapes me, as it did Professor Boris I. Bittker, who wrote of the distraction rationale as follows:

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*Subsequently. aggregate Treasury data were released that pointed to very poor productivity of control stock, and I reported some rough calculations of my own that suggested average productivity, but these contradictory estimates were based on data now more than 20 years old, not reflecting the impact of the 1969 legislation. The GAO report recently submitted to the Subcommittee on Oversight does not deal with rate of return on excess business holdings or from any other form of corporate control stock. It reports that balanced foundation portfolios earned a better return than portfolios tilted toward corporate stocks and bonds but (a) this finding was based solely on 1979 performance and, in any event, (b) does not focus on control stock.

> The theory espoused by the Senate Finance Committee that foundation managers will devote their time to business rather than to their charitable responsibilities disregards the fact that the corporations in question require business management whether their stock is owned by foundations or by other investors. Conversely, the foundation's investments must be managed by its officers (or by advisors paid by the foundation), whether the portfolio consists of all the stock of three corporations or 10 percent of the stock of each of 30 corporations. No evidence is offered to sustain the view that the aggregate number of man-hours required to manage the corporations and to manage the foundation's portfolio is altered by the concentration of the foundation's holdings in a few corporations, and it is hard to believe that any such evidence could be found. It is equally difficult to comprehend why the foundation's charitable functions are more likely to be impaired by its trustees' desire a make "a success of the business" than by their desire to increase the yield of a diversified portfolio. Success in either endeavor will increase the funds available to finance the foundation's charitable functions. It should be noted, moreover, that the restriction imposed by Section 4943 is in no way dependent on a showing that the same persons actually manage both the business and the foundation. The foundation's managers, officers and directors are, of course, ultimately responsible for deciding whether to hold or sell the foundation's investments, but this is equally true whether the portfolio is diversified or concentrated. [Bittker, "Should Foundations Be Third-Class Charities?" in Heimann, ed., _The Future of Foundations_ (Prentice-Hall, Englewood Cliffs, N.J., 1973), pp. 151-52.]

With respect to the other two concerns -- inadequate income and unfair competition -- existing provisions of the Tax Reform Act of 1969 at least mitigate these feared abuses. The distribution requirement of Section 4942, now pegged at 5% of asset market value, although not requiring that each investment produce this return, exerts pressure on a foundation to insist that the business in which it holds control stock -- even if it is a donor-related business -- produce dividends at about this level.* (That pressure will not be felt where the control stock is not a major holding for the foundation and where, accordingly, the 5% can be earned from other investments, but in that case the foundation does not significantly suffer from the control stock's low yield.) Any pressure on the controlled business to pay healthy dividends will also reduce the problem of unfair competition, for such dividend payments will make it difficult for the controlled business to expand with retained earnings at a rate faster than a competing firm owned by non-charitable shareholders. (Indeed, the dividend demands of such shareholders are far from fearsome; during the ten-year period ending December 30, 1982, total annual dividends paid by New York Stock Exchange companies on common and preferred stock, as a percentage of year-end market values, averaged 4.7%.) The unfair competition possibilities are further reduced by Section 4941's self-dealing prohibitions, which preclude the foundation from lending to any business of which the foundation's donor and other disqualified persons and their families own 35% of the stock.

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*Alternatively, the foundation might sell the stock to meet payout requirements but one suspects that most foundations will not wish to dispose of control stock for this purpose.

State enforcement of fiduciary duties supplements these federal controls. As Norman Sugarman has pointed out in his Statement to this Subcommittee, state activity in the charitable area has become more effective in recent years. And the tools are available: the ways in which state attorneys-general and state courts can induce a foundation to police the productivity of corporate control stock were described in a statement I submitted to the Ways and Means Committee in 1965 (Vol. 1, House Committee on Ways and Means, "Written Statements. . .on Treasury Department Reports," 89th Cong., 1st Sess. (1965), pp. 458-62).

Although the existing Federal and state enforcement mechanisms can address a good part of the low yield and unfair competition concerns (and although the distraction claim seems too gossamer to address), there may understandably be a perception of a residual risk, a feeling that further protection is needed than the present law provides.

(a) Under the inadequate return heading, there are two remaining problems.* First, as Assistant Secretary Chapoton states, in times of high returns a yield from the control stock may be "relatively low" even though sufficient to finance a 5% payout. Yet this may happen with any other non-control stock that pays lower than prevailing dividends. But if we are especially concerned about control stock (because of the unlikelihood that it will voluntarily be sold), then it is true that there is not much pressure to demand a higher-than-5% return, for Section 4944's restrictions on "jeopardizing investments" do not apply to contributed stock. A second problem (not, to my knowledge, addressed in the Statements submitted to this Subcommittee) is the fact that, even if a foundation holding low-yield control stock can meet the 5% payout requirement out of non-control stock, an excessive deduction may have been taken. The prior contribution of the control stock will probably have generated an income or estate tax deduction based on a valuation that assumes a level of productivity greater than that realized from the low-yield stock. In other words, if one measure of a stock's worth is the present value of a stream of future returns, and if that stream is not realized, then the stock may be considered to have been overvalued, and the deduction as well.

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*Assistant Secretary Chapoton proffers one other remaining problem related to inadequate returns: the difficult valuation of closely-held control stock "substantially undermines the effectiveness" of the minimum payout rule. This difficulty, however, arises -- and is handled -- in many transactional contexts other than the excess business holdings area, and nowhere else, I think, leads to Congressional avoidance of the valuation problem via an assault on the ownership of tough-to-value property.

(What is the measure of a "return" for purposes of determining such an overvaluation? Ordinarily one might include not only dividends and realized capital gains but also unrealized appreciation on the theory that the foundation is free to sell the stock and capture this gain -- the return is available to the foundation. In the case of excess business holdings, however, such a sale is not a likely event in the absence of forced divestiture. Because the appreciation of an excess business holding may never be realized in the foundation's hands and made available to charity, it would be reasonable to judge overvaluation on the basis of the stream of dividends and realized capital gains.)

(b) Under the "unfair competition" heading, where the donor's family owns less than 35% of the business in question, the self-dealing provision mentioned above does not prohibit the foundation from lending to, or buying stock in, the controlled business on terms -- or with forebearance -- not available to competing businesses. Under fiduciary principles reflected in state law regulating charitable trustees and also in the "jeopardizing investment" rule of Code Section 4944, that investment should be made -- and policed -- on terms calculated to maximize the foundation's return, but neither state attorneys-general and state courts nor the IRS will be able to spot all preferential sweet spots in such investments.

The Proposed Resolution

And thus the dilemma presents itself. On the one hand, existing federal and state law does not eliminate all the risks that can plausibly be attributed to excess business holdings. On the other hand, Section 4943's response -- a major regulatory intervention that seeks, in effect, to eliminate the risks by eliminating the business holdings -- brings with it a countervailing set of plausible risks, outlined earlier. I suggest that the dilemma can be resolved along the following lines.

Section 4943 would be amended to permit foundations and their donors to elect an optional regulatory treatment -- an alternative to divestiture of excess business holdings that would subject the foundation and donor to special strictures as the price for indefinite retention of the holdings in foundation hands. The optional treatment could be set forth in an addition to Section 4943 numbered Section 4943B; I will refer to this alternative regulation as "Section 4943B" treatment. A Section 4943B election could be made within one year of receipt of an excess business holding or one year after passage of the amendment, whichever is later. Various Section 4943B strictures can be imagined; here are the ones that address the 1969

Congressional concerns in the light of regulatory deficiencies discussed above:

1. Inadequate return. In order to deal with the possibility of a low return from an excess business holding, two strictures might be imposed on foundations electing Section 4943B non-divestiture treatment.

First, Section 4944 would apply to the excess business holding, despite the usual exemption of contributed property, so that the control stock could be deemed to be a "jeopardizing investment" if it did not meet Section 4944's standards for productivity. These standards would not necessarily condemn low-dividend stock, especially when "taking into account the foundation's portfolio as a whole" (Reg. Sec. 53.4944-1(a)(2)), but Section 4944 would require close scrutiny of the contribution of the stock to the financial health of the foundation.*

Second, in the event of a low return from dividends and realized capital gains, the donor's income or estate tax deduction could be subject to "recapture" in later years. I have not had an opportunity to work out all the details of -- or identify all of the problems associated with -- such a recapture arrangement, but here is a rough preliminary sketch of how it might work.

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*The Regulations, which now call for a one-and-only examination of an investment asset when it is first purchased, could be amended to call for this examination when an excess business holding is first donated to the foundation, or if donated prior to the amendment of the Regulations, upon the effective date of the amendment. The Regulations would have to be further amended to make it clear that the excess business holding is not to be faulted on the ground that it results in an undiversified portfolio; this is one outcome of the contributed-property exception to Section 4944 that needs to be retained so as not to negate the effect of the Section 4943B option.

A foundation electing Section 4943B treatment would file a special addendum to its Form 990-PF every three (or perhaps four or five) years, specifically reporting the dividends and capital gains realized from that stock during the preceding three (or four or five) year period. This report would include a computation of how this income compared to a "target" annual income figure fixed by statute or regulation. based on a fixed percentage of the book value of the stock in the foundation's hands,* or based on a percentage of current market values that represent the prevailing rate of realized return from institutional portfolios. Where the income received by the foundation was less than, say, 85% of the "target" income figure, the shortfall would be reported to the donor. who would, on his or her next tax return, add the amount of the shortfall to gross income as an approximate recapture of the original "excess" deduction.**

This approach deals with the recapture of a prior income tax deduction where the donor is alive at the time of the shortfall.

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*This figure might be 5% Since, as noted earlier, the measure of return we are using is not "total return" (including unrealized appreciation), the percentage would presumably be lower than that which would be an expected "total return" percentage.

**The theoretically preferable solution under "tax benefit" principles is to calculate that portion of the original deduction (in year X) that represents the capitalized value of the later shortfall and to add the resulting amount to gross income on the current tax return. My proposal would achieve very roughly the same effect, except that, in effect, it adds to gross income an amount reflecting interest on the "excess" deduction dating from year X to the current year.

If the donor is no longer living at the time of the shortfall, or if the original deduction was an estate tax allowance for a testamentary gift of the excess business holding, a recapture from the donor or his estate would be impossible or inordinately awkward, especially if the estate is no longer open. An arrangement resembling transfer of tax liability by contract or by agreement with the IRS* would meet this problem. In order for the foundation to elect the Section 4943B treatment, there would have to be in effect an agreement between the donor and some other person or institution (presumably a family member or family trust); this substitute obligor would be contractually committed to report the shortfall as income on his or her or its own income tax return. (To avoid selection of a low-bracket substitute obligor, a floor might be set on the tax rate applied to the recapture.) This requirement would not (and could not) apply to any donor who died prior to the enactment of Section 4943B. Moreover, it might be well to limit the length of time the substitute obligor would live in Damocletian suspense; the obligation would terminate, let us say, ten years after the donor's death.**

This recapture scheme is complicated (although no rival of the present Section 4943!). Moreover, in view of the possible salutory effect that Sections 4942 and 4944 and state policing may have on the productivity of corporate control stock, it is not clear that the scheme I have proposed would recapture many taxable dollars. Were we not faced with a dilemma concerning excess business holdings, I would probably not recommend adoption of the recapture provision. But such a provision merits consideration at this time as a measure that can help to resolve this dilemma, by giving some extra reassurance to those who are concerned about the income productivity of excess business holdings.

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*See 4 Bittker, Federal Taxation of Income, Estates and Gifts, Sec. 111.5.7 (1981).

**This recapture plan is an inexact mirror image of a proposal by the Treasury Department in its 1965 Report on Private Foundations that "unproductive" property donated to a foundation not give rise to a deduction "until the asset is (a) made productive, (b) disposed of, or (c) applied to charitable uses" (p. 59).

2. "*Unfair Competition*." In order to deal with the concerns about the competitive injury that might result from foundation financing of a controlled business* -- investments made and/or policed on a preferential basis but not amounting to a breach of Section 4941 or 4944 or state law -- there is a fairly simple answer. Those foundations electing Section 4943B treatment would be subjected to a special self-dealing provision added to Code Section 4941 that would preclude all debt or equity financing of a company the stock of which constitutes an excess business holding for a foundation. Two possible exceptions to this prohibition that might deserve consideration are these: (a) financing provided through the purchase of securities on a national exchange; (b) financing that has the specific approval of the IRS or a state court having supervisory jurisdiction.

3. "*Distraction*." Although, as noted earlier, the "distraction" claim lacks not only empirical support but also a plausible rationale, an alternative (Section 4943B)

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*I wish to reiterate that I know of no recent data base that provides empirical support for this concern or for the "inadequate return" concern discussed above.

treatment of excess business holdings could address this issue along with the others. There are. of course. limits on what legislation can do to prevent "distraction. Regulation cannot operate directly on a state of mind; moreover. it is doubtful that anyone would seek to prevent a foundation's trustees and officers, as fiduciaries, from paying attention to the health of any of the foundation's investment holdings, whether "excess business" or otherwise. But regulation can offer those worried about "distraction" some reassurance that foundation personnel (trustees or staff) who have charitable program responsibilities are not drawn into the day-to-day management of the controlled business enterprise. A quest for such reassurance is presumably one reason for recent discussion of the possibility of reducing the "interlock" between the foundation and a controlled business. It is difficult to distinguish, legislatively, "interlock" that may have a tendency to "distract" the foundation's program personnel from "interlock" that involves the foundation's financial personnel, for trustees and top staff are often concerned with both sides of the foundation. Accordingly, an "interlock" provision probably will have to disregard the program-finance distinction.

It could be provided, then, that foundations electing the alternative (Section 4943B) treatment will have to reduce to one or two the total number of their trustees and staff personnel who also serve as directors, officers, or employees of the controlled company. I have not proposed a 100% elimination of "interlock" because that might be inconsistent with the rationale for the Section 4943B alternative treatment. One reason for the 4943B option is to respond to the concern about the possible disincentive effect of present Section 4943 on the gifts of capital stock to foundations. Telling a donor that he or she must either give up a role in what is often the family business or quit the family foundation may have an almost equally chilling effect on the donor's willingness to make the control stock conribution. Leaving room for a limited "interlock" should avoid such discouragement.

The reader is reminded that none of the foregoing Section 4943B provisions would come into play unless the foundation elected the alternative treatment. Some foundations will prefer to stick with the divestiture option, either because divestiture is relatively easy for them and their donors to adjust to, or because they prefer divestiture to the regulatory regime imposed by Section 4943B.

Some Loose Ends

Past divestitures. The enactment of a Section 4943B option along the lines set forth above would leave, in its wake, a number of foundations that had already completed Section 4943 divestiture and could not hope to return to the *status quo ante*. While, from their perspective, it would be unfortunate that the 4943B option had not been available when they went through the throes of divestiture. that can not be a reason for rejecting corrective legislation at this time. An amendment otherwise desirable on its merits ought not be cast aside because it comes too late to be of benefit to all affected parties. The conclusion might be otherwise if the affected parties were commercial competitors, with substantial unfairness the result of a change in ground rules, but that is not the case here.

In the absence of a competitive unfairness problem, I see no reason not to make the 4943B option available at once to all foundations -- not only those that will receive excess business holdings in the future but those that already have such holdings on the date of Section 4943B's hypothesized enactment.

Applicability to public charities. In suggesting the 4943B amendment, I have not taken up the issue of whether the excess business holdings rules -- with or without the suggested amendment -- should be faulted for dealing only with foundations and not with other charitable bodies that hold corporate control stock. (The tendency of non-foundation charities to hold such stock may have increased since 1969, when the Congress in effect declared foundations to be the only ineligible receivers). The issue of discrimination against foundations has been raised in connection with H.R. 3043, proposed legislation recently introduced by Reps. Conoble, Shannon, Frenzel and Gephardt to eliminate certain "tax disincentives for gifts to foundations." The section-by-section analysis of this bill states that these disincentives "have contributed to a dramatic reduction in giving to foundations" and characterizes them as "discriminary tax rules." The excess business holdings provision -- applicable only to foundations -- can also be characterized as a "discriminating tax rule." The Section 4943B election outlined here would not end such discriminatory treatment, but, by providing an option to forced divestiture, it would moderate the impact of the discrimination.

Extended divestiture deadlines. Adoption of the alternative treatment plan proposed here should not preclude enactment of amendments to Section 4943 permitting extension of the five-year deadline for divestiture of holdings received after May 26, 1969 (as provided in S. 562). A strong case has been made, in my opinion for permitting such extension, and that case deserves to be considered on its own merits regardless of the disposition of the alternative treatment I have outlined.

Conclusion

It is probably rare, in the annals of legislation, to come upon a controversy that can be resolved in a way that honors the views and concerns of both sides. The excess business holdings controversy appears to be one of those rarities. Because of the national interest in the health of private philanthropy, I hope that the Committee on Ways and Means will take advantage of such an unusual opportunity. The proposal I have outlined here is intended to invite the Committee's attention to this opportunity -- and suggest one way to seize it.

Respectfully submitted,

John G. Simon

John G. Simon

NOTE

This statement is made in a personal capacity on the basis of my research and teaching, over a period of many years, on the role and regulation of philanthropy. Although my work has been based both at the Yale Law School and the Yale Program on Non-Profit Organizations, my statement does not represent the position of either of these institutions. The Program on Non-Profit Organizations, as noted in my statement, is conducting a major empirical study, in conjunction with the Council on Foundations, that bears on some of the issues discussed herein, but that study is now in its infancy, and therefore its results are not and could not possibly be reflected in my statement. I also note, in the interests of full disclosure, that I am a trustee and President of a relatively small private foundation -- one that has never had any excess business holdings and has no prospect of ever receiving any.

SMUCKER'S,
Orrville, Ohio, June 3, 1983.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, Rayburn House Office Building, Washington, D.C.

DEAR SIR: I have been informed that Dr. Russell G. Mawby, a fellow co-trustee of the W. K. Kellogg Foundation Trust, has requested the opportunity to appear before your Subcommittee when it holds hearings on private foundations on June 27 and 28. As one of the co-trustees, I would like to express my thoughts on this very important subject.

When I accepted the position as a co-trustee of Trust 5315 I was fully aware of the fiduciary responsibility and obligation to invest wisely the assets of the Trust for the benefit of the public interest. This is our ~~first priority~~. Our second is to monitor and review the grant-making activities of the W. K. Kellogg Foundation. Both of these activities are carried out by quarterly meetings and weekly contact by mail, including the receipt of all official materials from the Foundation.

W. K. Kellogg, the founder of the Foundation, placed in the Trust his Kellogg Company stock which has steadily increased in value from approximately $45 million in 1932 to $994 million in 1982. Over this same period of time, the Foundation has made charitable distributions of $643 million. The annual income in 1982 alone was $53.3 million. We are pleased that our continued analysis shows that this concentrated investment steadily increased in value, thus affording an uninterrupted rise in charitable distributions and fulfilled the important mission of serving the public interest.

As trustees with investment responsibility, we regularly study and review in depth this concentrated holding and weigh the alternatives. We will continue to follow this procedure and if, in the future, we are convinced of other alternatives that will be more productive, we will certainly give them serious consideration. As of this date, the Kellogg Company holdings of the Trust have far exceeded the total rate of return for all other types of diversified portfolios.

As you know, currently the Kellogg Trust 5315 holds 47% of the common stock of the Kellogg Company. Under the present law, we will need to divest our holdings in the Kellogg Company to 35 percent by 1994. The reduction from 47% to 35% represents divesting of more than a quarter of the Foundation assets. However, in reality, if a buyer were located to purchase the quantity of stock, they would possibly want a larger position which could force the sale of one-third or even more in order to consummate the sale.

I am of the firm belief that a decision of this nature should be based upon investment judgment and the best interests of charity, not legislative mandate.

Therefore, I respectfully urge that Section 4943 of the Internal Revenue Code of 1954 as amended by the Tax Reform Act of 1969 be eliminated so that I have the opportunity to continue to exercise my best judgment on behalf of charity.

Sincerely,

PAUL SMUCKER,
Chairman, Chief Executive Officer.

SOUTHERN CALIFORNIA ASSOCIATION FOR PHILANTHROPY,
Los Angeles, Calif., June 29, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: As you know, this is a particularly difficult time for many individuals and communities in this country due to recent and current economic conditions. As a result of this, demands upon private foundations and corporations for needed support have increasd significantly, especially with public sector funding cutbacks. Private sector grantmakers faced with these demands are "armed" with extremely limited resources, including little or no support staff and a relatively small amount or money compared to the needs (e.g., total private foundation and corporate contributions represent only 10 percent of total non-governmental charitable contributions).

Given this situation, the extence and efforts of the regional associations of grantmakers across this country become extremely important. The creation of these bodies has been cited by noted historian Dr. Barry Karl as ". . . one of the most significant developments in philanthropy in the past 20 years." These associations play an increasingly important role in helping local funders identify and address individual and shared concerns which benefit needy individuals, service providers and communities.

As Executive Director of one of these regional groups, the Southern California Association for Philanthropy (SCAP), I would like to take this opportunity to share with you several specific examples of ways in which SCAP and our members are working to increase philanthropy's effectiveness:

(1) Last year, SCAP studied private sector funding of Hispanic organizations in the L.A.-Orange Country area. Following from several Association meetings which focused on Hispanic issues, this study was helpful to both donors and grantseekers in identifying some of the obstacles on both sides which needed to be addressed in order for expaned funding of community-based minority organizations.

(2) A recent service inaugurated by SCAP at members' request is our "collaborative funding services." Here, we help grantmakers identify other grantmakers for possible joint funding of a proposal. This service increases grantmakers' ability to respond to interesting proposals which are too big for them to deal with alone. This service also helps in the reverse, when the grantseeker is so small compared to the size of the request that a single source grant would create a "tipping" problem, thus endangering the grantee's tax status.

(3) SCAP's Board of Directors and relevent association committees have clearly supported full compliance in filling out 990 PF tax forms, including the sections dealing with information about grantmaking policies and procedures.

(4) At the request of a local group of foundations and corportions, SCAP recently played a critical role in assessing the need for an emergency loan fund for performing arts organizations. The current times are particularly difficult for smaller arts organizations, and this study provided the data necessary for consideration of furthe techniques (which lead to the development of our service noted above), and innovative grantmaking approaches. I have also enclosed our annual report and the latest copy of our newsletter, which should provide more detailed information about SCAP's role and activities.

I congratulate you, your staff and the Oversight subcommittee for your efforts in seeking full and necessary input in your review of philanthropy in America. If there is any way in which I can be of service to you, please let me know.

Sincerely,

LON M. BURNS, *Executive Director.*

Enclosure.

[Additional material has been retained in the subcommittee files.]

RHOADS, SINON & HENDERSHOT,
Harrisburg, Pa., June 28, 1983.

Re rules governing private foundations—excess business holdings—divestiture requirement S. 562.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing as secretary of the Donald B. and Dorothy L. Stabler Foundation in response to the request of the Subcommittee on Oversight of the Committee on Ways and Means for written statements related to the issues considered by the sub-committee at hearings held on June 27 through June 30, 1983.

The Donald B. and Dorothy L. Stabler Foundation is a private foundation created in 1966. Funds of the foundation have been distributed regularly to numerous public charities. Mr. Stabler, one of the founders of the foundation, is also the owner of stock of Stabler Companies, Inc., subsidiaries of which are major contracting firms. Mr. Stabler has considered over a long period of time the possibility of bequeathing in his Will stock of the Stabler Companies, Inc. to the foundation in order that this major asset be made available for public charitable purposes, particularly for Lehigh University. The present rigid provisions of IRC § 4943, imposing taxes on excess business holdings, have been an obstacle to the implementation of this plan, as well as the fact that it would possibly necessitate liquidation of substantial employment.

We wish to express our strong support for Senate Bill 562 which would authorize the Secretary of the Treasury to grant extensions of the five year period within which private foundations must dispose of excess business holdings.

Under the existing provisions of IRC 4943, if a controlling shareholder's stock is bequeathed to a private foundation on the shareholder's death, the foundation is required to reduced its holding in the corporation to 20 percent within five years of the bequest. The divestiture is mandatory, without regard to the effect it may have on the particular charity or charities for whose benefit the foundation was established. As the law presently stands, the divestiture requirement creates the likelihood of a forced sale at a distress price. In many cases, the value of the business holding may also be temporarily depressed as a result of the loss of leadership within the corporation, resulting from the donor's death. The forced sale may have to take place in a depressed market without adequate opportunity to accomplish a sale at a fair price for the benefit of the charitable beneficiaries. Moreover, such compulsory sales can be devasting to career employees.

The present law requires divestiture regardless of whether or not the retention of the securities would create any of the conditions which the private foundation provisions are designed to avoid. Thus, the present provisions are inflexible, arbitrary and do not promote the purposes for which they were adopted. The required disposition, often at distressed prices, can in fact constitute the greatest harm to the charitable interest of any action that could be taken by the foundation.

For example, in the case of the Stabler Foundation, consideration has been given to providing for the transfer of all stock of Stabler Companies, Inc. to the Stabler Foundation on the death of Mr. Stabler. At that time, the sole beneficiary of the foundation would be public charities. No member of the donor's family would have any direct or indirect interest or relationship whatsoever with the foundation. Independent foundation trustees, with fiduciary responsibilities both under applicable state law and the foundation provisions of the Internal Revenue Code, would be responsible for the execution of the charitable purposes of the trust.

Particularly in instances such as this, where the donor of the business holdings has died and no ties remain with members of the decedent's family, the present provisions of § 4943 are unjust and counterproductive. The remaining provisions of the Revenue Code dealing with private foundations including the tax based on investment income, taxes on self-dealing, taxes on failure to distribute income and taxes on investments which jeopardize charitable purpose, would adequately assure the charitable use of the foundation to justify its tax exempt status.

The provisions of Senate Bill 562 would alleviate the negative effects of the present arbitrary requirement for disposition of excess business holdings within five years. While we believe that the entire requirement for disposition of excess business holdings could safely be repealed, nevertheless, the limited discretion given to the Secretary of the Treasury to extend the five year period would permit extensions in cases of necessity and where there is no detriment arising from a longer holdings period. The Bill's requirement that the private foundation take steps to dispose of holding throughout the initial five year period should be removed from consideration in the decision of whether to grant an additional extension.

We would be pleased to supply such further information as the Committee might desire in support of our position and in support of passage of Senate Bill 562 or other similar legislation.

Very truly yours,

THE DONALD B. AND DOROTHY L. STABLER FOUNDATION.
By FRANK A. SINON, *Secretary.*

STANFORD UNIVERSITY MEDICAL CENTER,
Stanford, Calif., June 17, 1983.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing in support of the new legislation on foundations introduced by Representative Conable as H.R. 3043. I believe that legislation which simplifies the regulations pertaining to private foundations and encourages the further private support of such charitable institutions is genuinely warranted.

My belief is based on personal experiences with two major private foundations that have supported my work on university and medical school financial planning. With the support of the Lilly Endowment in the early- to mid-70's we, at Stanford University, were able to develop a set of financial planning tools which have become widely adopted throughout higher education and which are commonly believed to have assisted these institutions to face up to new financial realities—including downward adjustments in federal support—and to plan for a viable future.

More recently, I have collaborated on a grant from The Commonwealth Fund which brought together the chairmen of deprtments of medicine from five different medical schools, three of which are privately supported and two publicly supported (i.e., state) institutions. Through this collaboration, we have collected a data base on financial trends in past years and are now proceeding to develop computer-based planning models to test out alternative future strategies in light of current and anticipated trends in external support and other key variables. Such tools are urgently needed by these institutions and others like them in order to chart a sensible course in response to recent and potential future cuts in the federal budget. These efforts are very difficult, if not impossible, to organize in the absence of access to foundation funds for no institution of higher education that I'm aware of has idle money or personnel who can take on such a task while being fully paid from some regular source. Thus, it is evident that the foundations have a key role to play in helping these institutions to respond appropriately to changing external conditions.

I urge the Subcommittee on Oversight of the Committee on Ways and Means, therefore, actively to support the legislation in H.R. 3043.

Sincerely,

DAVID S. P. HOPKINS, Ph.D.,
Director, Analysis & Planning and Executive Assistant to the Vice President of Medical Affairs.

STATEMENT OF MICHAEL MURPHY, COUNSEL, STARR FOUNDATION

The Starr Foundation was founded in 1955, and has been supported primarily by inter-vivos contributions or testate bequests of the late Cornelius Vander Starr, and his business associates and friends, who built an international insurance organization during his lifetime, as well as by various corporations which were affiliated with such individuals. The Foundations' assets are currently valued in excess of $250,000,000.

The Foundation has primarily dedicated itself to supporting higher education; through scholarship programs, the endowment of educational chairs at leading American universities, and the providing of educational facilities, medical research and facilities, and facilities in support of the arts.

The Starr Foundation is committed to the principles of maximizing the ultimate use of each dollar it contributes for the purpose to which it is committed, while maintaining the barest minimum of overhead and administrative costs within the Foundation.

Over the past 5 years administrative costs and expenses in running the Foundation have annually remained less than 1 percent of the value of the assets held by the Foundation, and less than 10 percent of the value of assets granted or contributed by the Foundation in any year. Total annual compensation to foundation managers, officers, or other persons related to the foundation cumulatively, have never exceeded $84,000 per annum, or 30 percent of the Foundation's annual administrative costs. To minimize its administrative costs, the foundation has not substantially diversified its investment portfolio from the contributions it received in the form of common stock of a public traded company which represents approximately 6 percent of the outstanding stock of such company. The Starr Foundation is subject to the excess business holding rules.

While the Starr Foundation has found that a substantial amount of its administrative time, effort, and legal costs have been incurred in order to comply with the rules of the Internal Revenue Code governing private foundations, it respects the basic need for such rules and beneficial effect some of the rules may have in promoting the objectives of philanthropy. The Starr Foundation has reviewed the suggested amendments to the rules provided in H.R. 3043, and is generally in support of such proposals.

In light of its objective to maintain, administrative costs at a minimum in relation to its contributions, the Starr Foundation has found that the rules which create such a broad and geometrical increase in the number of "disqualified persons with respect to a foundation" which must be tracked, imposes a substantial, costly, and in many instances, unnecessary burden on the Foundation. The Foundation estimates that approximately 15 to 20 percent of its annual expenses have been devoted to compliance and interpretation of the tracking rules which require identification of the shareholdings of all disqualified persons owning stock in a company in which an excess business holding exists.

As a result of small contributions made prior to the passage of the 1969 Reform Act, each of four family groups were designated "substantial contributors" to the Starr Foundation and therefore disqualified persons forever under the Act. The contributions of each family to the Foundation were made over 15 years ago, and each represents no more than ¼ of 1 percent of the cumulative contributions received by the Foundation to date as valued on the date of the contribution. As a result of the minimal contributions prior to 1969, the Foundation tracks the common stock holdings of the thirty-five individuals and corporations related to these 4 families. Some fifteen of these persons are foreign individuals or corporations and many have little knowledge of the existence of the Starr Foundation other than through its continual efforts to determine if there has been any change in their common stock holdings in the company in which the foundations principal holdings are invested. As a practical matter, even after the foundations' tracking efforts are exhausted, an accurate account of excess business holdings cannot be assured as many of the individuals and corporate holdings by disqualified persons are held in nominee or "street name" by these persons. The holdings through nominee and street names make it possible to accurately reflect the amount of excess business holdings. Penalties for failure to accurately track such holdings can be very severe for the Foundation.

The suggested language in H.R. 3043 which limits the definition of family member and thus disqualified person to include only children and grandchildren, rather than all lineal descendents of substantial contributors, would eventually reduce the magnitude of the tracking problem. However, for the Starr Foundation relief would not occur until after the proliferation of another generation of disqualified persons who are family members of the substantial contributors which the Foundation currently tracks for no meaningful purpose.

The amendment of the family member rule, as provided in H.R. 3043 does not deal with corporate contributions. Nor does it eliminate persons who may have fallen within the strict definition of substantial contributor years ago, and who have in fact had little or no contact with the foundation in subsequent years.

The Senate Finance Committee Report on the Tax Reform Act of 1969 shared these concerns in stating that they feared the House definition of "substantial contributor" would characterize many persons as substantial contributors when in fact their contributions had no real impact on the foundation. The report continues—"The Committee was especially concerned that the rules be reasonable as to who are substantial contributors and related persons because the foundation will need to keep the records to identify those who are disqualified from dealing with it. The committee concluded that the 2 percent minimum for substantial contributors, the elimination of brother/sister attribution, and the 20 percent minimum for partnership would make the rules practical and enforceable." Senate Report No. 91-552. Report of the Committee on Finance to accompany H.R 13270, 91st Cong. First Session at 30.

It is submitted that the present rules defining "substantial contributors" are too broad in part because any person who once becomes a substantial contributor with respect to a private foundation shall always be a substantial contributor with respect to that foundation, even if in future years he no longer has any real connection with the foundation. For example, persons who make contributions of slightly more than $5,000 in any one year, or over several years early in the foundation's life, when it has total contributions of no more than $250,000 will forever afterwards be disqualified persons with respect to that foundation even if they ae not foundation managers and future contributions by others total many millions of dollars.

The Starr Foundation suggests that at some point, the defining as substantial contributors of persons who are not foundation managers, and who have not given significant or perhaps any sum of money to the foundation for several years, and whose total contributions to the foundation when compared to total aggregate contributions are de minimus, is a wasteful, costly and unnecessary exercise which may serve no legislative purpose.

The foundation suggests that once the total contributions made by a person, including a corporation, who has not contributed in several years to a private foundation have fallen below 2 percent of the foundation's aggregate contributions, the person and such family members as may exist should no longer be treated as disqualified persons with respect to the private foundation, unless he or (it) has a continuing relationship with the foundation reflected in his status (or another family member's status) as a foundation manager. The 2 percent rule currently used is designed to measure a somewhat arbitrary point in time when contributions by a person to a coundation are considered to become significant. However, the current definition creates the relationship of "substantial contributor" with respect to a foundation forever and does not take into account that the effect of such contributions may recede into the past as additional contributions are received from other sources.

Tarrant County Association for the Blind,
Fort Worth, Tex., June 16, 1983.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: As the Executive Director of the Tarrant County Association for the Blind, I would like to take the opportunity to tell the members of the Committee on Ways and Means about the support that this agency has received from private foundations. I would like to request that this letter be made an official part of the Oversight Subcommittee's hearing records.

The Tarrant County Association for the Blind has received the support of numerous private foundations to accomplish a wide variety of projects designed to enhance the services that we offer the blind citizens in this community. We have received foundation support for quite a number of our 48 yrars.

Two particularly significant examples of the assistance that we have received involves the Sid W. Richardson Foundation. In 1977 the Lighthouse was without funds and a few months away from closing its doors. There were no other sources for funding. The Foundation provided grants for the sales program and operating capital for a three year period. This support allowed us to implement a re-organization plan that has resulted in a financially stable operation. The second example of the Richardson Foundation's support is that they were the major contributor to our recently completed capital expansion project. The Association now enjoys a modern, efficient facility designed to meet the agency's present and future needs.

Our funding goal for the expansion project was $700,000. An analysis of the contributions shows that 14 percent of the donors were private foundations. However, these foundations provided 83 percent of the funds that were raised.

Another example of foundation support involves a service program that provides self-help skills training to the elderly blind so that they may maintain their independence. This program was initiated under Title XX funding which was terminated in the recent budget cuts. The foundation is providing 100 percent of the direct operating costs of this program. The program served 250 elderly blind citizens in 1982.

These are but a few examples of the support that the Lighthouse has received from private foundations. They have and will play a vital role in this agency's efforts to provide quality services to the blind. In our opinion the on-going existence of provate foundations is essential.

Sincerely,

ROBERT W. MOSTELLER, *Executive Director.*

THE UNIVERSITY OF TEXAS AT AUSTIN,
COLLEGE OF EDUCATION,
Austin, Tex., June 15, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: I am writing to provide input to the discussions of the Oversight Subcommittee of the House Ways and Means Committee on the role of private foundations.

I don't know of anyone better qualified to talk about the influence and impact that foundations can have on educational institutions than myself. We have been fortunate here at the University of Texas in the College of Education to receive a number of grants to support our efforts to improve the quality of teaching and learning in American community colleges.

Specifically, we have received ongoing grant support from the Sid Richardson Foundation (Fort Worth, Texas) and the W. K. Kellogg Foundation (Battle Creek, Michigan) over the last eight years to sustain our efforts to dramatically improve the quality of leadership in American community colleges. As a result of grants from these two foundations in particular, we have been provided fellowship assistance to recruit some of the most talented and gifted students from across these United States to pursue doctoral studies in educational leadership. Without doubt, many of these bright and talented students would never have left California, Alaska, New Jersey, and other states of home residence to travel across the nation to study at the University of Texas without the support and encouragement provided by the foundations.

Both the Richardson and Kellogg Foundations have also funded our efforts to host state, regional, and national conferences focused on the improvement of student learning in American higher education. We have hosted for a number of years now an annual national conference on teaching excellence. Our speakers have included Ross Perot, Chairman of the Board of Electronic Data Systems, and other representatives of the private sector who have shared with hundreds of committed college and university faculty members the real needs of American business and industry for the '80s and '90s. Foundation funds have enabled us to bring to these conferences some of the most articulate spokespersons from the industrial, business, and political worlds. Foundation funds have also allowed us to host state conferences several times a year for board members and administrators from community colleges and for other college administrative personnel. These conferences, without exception, have focused on the improvement of skills for those who lead American institutions of higher education.

These foundation funds have also been used to establish a network of community colleges and universities all across North America and the United Kingdom focused upon the issues of quality and excellence in teaching. At the present time, we have a network numbering more than 180 institutions all devoted and dedicated to the improvement of teaching and learning in American colleges and universities. As a result of the initial seed money from the foundations mentioned here, we now have almost 200 colleges paying membership fees to receive quality materials emanating from this office.

I do hope that this information is useful to you and to the Oversight Subcommittee, and I would like very much to request that these comments be made an official part of the hearing record.

I hope that you and the Committee will feel free to call on me if I may provide additional information to you. With every good wish.

Sincerely,

JOHN E. ROUECHE,
Professor and Director.

State of Texas,
Office of the Governor,
Austin, Tex., June 3, 1983.

Hon. **Charles D. Rangel,**
Chairman, Oversight Subcommittee, Committee on Ways and Means,
Rayburn House Office Building, Washington, D.C.

Dear Chairman Rangel: I am writing you in support of H. B. 2589, which I understand will be considered by your Subcommittee during hearings scheduled for June 27 and 28.

My concern involved the Houston Chronicle, which is published by the Houston Chronicle Publishing Company, a wholly owned subsidiary of Houston Endowment, Inc., a private foundation. Prior to engaging in a political career, I was a resident of Houston, and I am well acquainted with both Houston Endowment, Inc. and the Houston Chronicle.

Houston Endowment, Inc. is a charitable foundation created by Jesse H. Jones, who was an outstanding citizen of Houston and Texas. He served as Secretary of Commerce and head of the Reconstruction Finance Corporation during the Roosevelt administration. In addition to his many other accomplishments, he was instrumental in causing the construction of the Houston Ship Channel, which made Houston one of the major ports in the United States.

Mr. Jones left virtually all of his property to Houston Endowment, Inc., and those assets have been well managed, with the income being devoted to many beneficial charitable purposes. Outstanding among the grants made by Endowment are scholarship grants in high school graduates in the Houston area which have permitted a number of underprivileged minority group children to attend college. I understand that some 600 students are in college on a continuous basis supported by these scholarship grants, and it is interesting that the present Mayor of the City of Houston, Kathy Whitmire, went to college on an Endowment grant.

Endowment's activities have not been limited to the field of education. It also supports medical research and community projects for minority groups, among many other activities.

Throughout the years, the Houston Chronicle has been published in a sound and responsible manner. It has truly been a strong, independent and constructive voice in the community.

The Internal Revenue Code requires that Endowment divest itself of the Houston Chronicle not later than the Spring of 1989. Under the laws of Texas, the Trustees of Houston Endowment are required to obtain the highest price available for any asset which is sold. Experience has demonstrated that when major newspapers are sold, the purchasers are almost invariable national newpaper chains and sometimes foreign buyers. If the Chronicle is sold to either a chain or a foreign buyer, Houston and Texas will lose the local independent voice that the Chronicle presently provides, and the value of the Chronicle to the community may well change for the worse.

My desire to avoid any such occurrence has motivated me to address this letter to you, and I urge you to give full consideration to the need to maintain local, independent ownership and control of the news media wherever possible. The present law encourages the concentration of the power of the news media in fewer and fewer hands. H. B. 2589 will change this.

Very truly yours,

Mark White, *Governor.*

Thresholds,
Chicago, Ill., June 17, 1983.

Mr. **John J. Salmon,**
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: I understand that the Oversight Subcommittee of the House Ways and Means Committee has scheduled two days of hearings on private foundations. I would like to tell you of my own experience with foundations and explain how foundation support has been particularly valuable for our agency.

Thresholds is a psychiatric rehabilitation center that derives about two-thirds of its funds from State sources; the remainder from foundations, corporations, and individuals. Our experience over the years has led me to the inescapable conclusion that foundations are a crucial funding source for a small agency like Thresholds which has a unique program to promote. Let me give you three examples:

The Chicago Community Trust, the outstanding philanthropic foundation in this City, has supported several Thresholds' projects that would otherwise have languished. Our agency has been particularly devoted to providing housing for psychiatric patients and, most particularly, in devising a method whereby such housing would be self-supporting. The Chicago Community Trust not only granted Thresholds funds that were sufficient for the capital expenses for a new residence but additionally provided money for operational deficits. They strongly supported our successful appeal to the Woods Foundation for additional operating support. To make a long story short—the project is an outstanding success and has consumed less of the funds than originally granted. These unused funds will probably be used to "clone" another such residence.

The Chicago Community Trust has also encouraged research in our field. In particular, they supported a research project which related the attendance patterns of our members to their level of community success. The results of this three-year project is still being quoted at professional meetings and journals and was supported entirely by the Chicago Community Trust. In the case of York House, their grant was $240,000. In the case of the research it was $30,000.

The Field Foundation of Illinois has also been a long-time supporter of Thresholds. When State cutbacks in research funding forced complete cancellations of projects that were well underway we appealed to the Field Foundation to support one project that had completed 2½ years of its scheduled three-year duration. It would have been a shame, we argued, if all the data would be wasted for lack of a relatively small amount of money. The Field Foundation, in its wisdom, granted Thresholds $13,000 to complete the project. Peliminary results indicate that this research will make a substantial contribution to vocational evaluation.

Some years ago, the Joyce Foundation granted Thresholds $150,000 in support of the community "share" of a major grant from the National Institute of Mental Health to evaluate the effect of maternal schizophrenia on the mental health of their pre-school children. This five-year project also developed some powerful conclusions and sweeping recommendations that would not have been possible except for the money contributed by the Joyce Foundation. It was a unique example of a marriage between Government support and a private foundation.

To be frank, I would go on with significant additional examples of the unique character that private foundation gives to social agencies like Thresholds. In fact, I would be glad to do so if it would be needed and would make the case any stronger for continued foundation support. We simply couldn't do without it and I know that I speak for many other non-profit agencies.

We would appreciate it if this letter be made an official part of the hearing record.

Thank you for the opportunity to contribute these comments.

Sincerely yours,

JERRY DINCIN, Ph.D., *Executive Director.*

UNITED WAY SERVICES,
Cleveland, Ohio, June 14, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: United Way Services, a local voluntary, not-for-profit federation of givers and service providers, would like to make these comments an official part of the Oversight Committee of the House Ways and Means Committee hearings on private foundations. We have had many opportunities to collaborate with and see the positive results of the work of private and community foundations. One such recent endeavor, I believe, highlights several critical points.

I am speaking of the Cuyahoga Emergency Funders Group (CEFG). This activity, which was spearheaded by The George Gund Foundation, brought together for the first time in Cleveland's history, private community and corporate foundations, corporations, County and City governments, UWS and other organizations to provide funds for emergency hunger and shelter needs. The George Gund Foundation, along with the Cleveland Foundation, were quick to recognize the unfortunate impact of reductions in government funding for these programs. People were without a place to sleep or sufficient food to keep from going hungry.

They provided both the impetus and the seed money which "primed the pump" and encouraged other funding sources to participate. In a span of a few days, almost $1,300,000 was raised. Without these funds many people would not have had a place to stay or food to eat in the late Winter and Spring of 1982/83. These funds have enabled programs to continue to operate. The recently enacted Public Law 98-8, will provide, at least for a short time, public funds for the same purpose.

I have attached a list of various sources of funds and programs which have received funds, also the purposes for these funds.

Literally thousands of people would not have food or have been housed in Cuyahoga County if, during this critical time, the Foundation had not taken the lead.

Sincerely,

William A. Kerrigan,
Executive Vice President.

Attachments.

CUYAHOGA EMERGENCY FUNDERS GROUP

SOURCES OF FUNDS

SOHIO, United Way Services, Cleveland Foundation, Codrington Foundation, George Gund Foundation, Jewish Community Federation, Fox Foundation, City of Cleveland, Cuyahoga County, White Charitable Trust, General Motors, The Temple, Catholic Charities, TRW, and Miscellaneous.

FINAL CUYAHOGA EMERGENCY FUNDERS GROUP SUMMARY OF ALLOCATIONS AS OF MARCH 23, 1983

Recipient's name	Amount allocated for food	Amount allocated for shelter	Amount allocated for overhead		Total
			To umbrella	To centers	
GCIC (suburban food vouchers)	$75,880				$75,880
GCIC (three congregate meal sites)	47,280				47,280
GCIC (hunger centers)	323,693		$27,798	$14,916	366,407
St. Vincent DePaul	237,385		4,985	16,065	258,435
Foodbank (independent centers)	76,124		6,090	4,696	86,910
Freezers and refrigerators (tentative)			35,000		35,000
Infant formula (tentative)	150,000				150,000
Salvation Army	26,226	$78,136			104,362
Volunteers of America		34,450			34,450
Red Cross		25,000			25,000
Nazareth		21,165			21,165
Foodbank (line of credit)	100,000				100,000
Total	1,036,588	158,751	73,873	35,677	1,304,889

The Upjohn Co.,
Kalamazoo, Mich., June 7, 1983.

Hon. Charles B. Rangel,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, Rayburn House Office Building, Washington, D.C.

Dear Mr. Rangel: I am one of three co-trustees of the W. K. Kellogg Foundation Trust. I understand that Dr. Russell G. Mawby, a fellow co-trustee of the Trust, has requested the opportunity to appear before your Subcommittee when it holds hearings on private foundations on June 27 and 28. I am writing to express my personal views in this regard.

As a trustee of the Trust, I appreciate fully my reponsibilities to act in the public interest. As trustees, we have an obligation to invest the assets of the Trust to best serve the public interest and to exercise surveillance over the grant-making activities of the W. K. Kellogg Foundation. We meet at least quarterly in the discharge of these responsibilities and are in continuing contact by mail, including receipt of all official materials of the Foundation.

W. K. Kellogg, the founder of the Foundation, put in the Trust his fortune created by the Kellogg Company. The Turst now holds 47 percent of the common stock of the Company. The value of assets at the time of gift was approximately $45 million. Over a fifty-year period, the Foundation has made distributions totaling $643 million, the Trust assets are now valued at $994 million, and the annual income in 1982 was $53.3 million. Our continuing analysis indicates that this concentrated investment has served very well the charitable purposes of the Trust and the public interest. As trustees with investment responsibility, we regularly review this concentrated holding and weigh alternatives. We are prepared to change our investment when we are convinced that we can do better for the public interest. To date that has not been the case. Indeed, the Kellogg Company holdings of the Trust have historically far exceeded the total rate of return for all other types of diversified, balanced, or bond portfolios.

However, under current law, we will be required to divest about one-third of our holdings of Kellogg stock by May 1994. I feel that a decision of this nature should be based upon investment judgment and the best interests of charity, not legislative mandate.

Therefore, I urge that Section 4943 of TRA-69 be eliminated, so that I am given the opportunity to exercise my best judgment on behalf of charity.

Sincerely,

CHARLES H. LUDLOW,
Vice President and Treasurer.

URBAN AFFAIRS CORPORATION,
Houston, Tex., June 17, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: As Executive Director of the Urban Affairs Corporation, a Texas non-profit corporation, it is my pleasure to report to the Oversight Committee of the House Ways and Means Committee on our activities as a direct result of funding from four major foundations.

In 1981, we approached the Robert Wood Johnson Foundation for funding to establish a primary health care facility for adolescents in Houston's inner city. The population is largely minority and considered "structurally underserved"; that is, without major medical and social intervention, critical medical needs will go unmet.

With the Robert Wood Johnson Foundation acting as the catalyst, a coalition of foundations and private corporations was formed to provide funding for a health care facility for a period of eight years. The Ford Foundation, Hogg Foundation, Brown Foundation, along with the Robert Wood Johnson Foundation enabled us to open a health facility, which would not have otherwise been possible without their support.

Prior to this undertaking, little public attention or funding had been forthcoming from the public sector which targeted the severe health care needs of adolescents. It is fair to assume that due to the complexity and magnitude of these problems, coupled with the cost of providing adequate intervention modalities, this project would not have been possible through traditional program funding.

This project, serving 8,000 students in six targeted Houston Independent School District inner city schools, has emerged as a model in health care service delivering linking existing community resources. It is one of the first Robert Wood Johnson Foundation public-private partnership arrangements in the country, and is unique in involving the private sector as a funding partner.

Services available through this center to adolescents include complete medical evaluation (diagnostic testing and treatment), health education, psychological and counseling services, parenting and consumer education, and social services and referrals. Of particular interest is the fact that an integral component of the service includes a child development center for 92 infants of adolescents attending school. Funding for this program is provided by the Texas Department of Human Resources under Title XX.

All of the program services are designed to positively impact adolescent preventative health behavior with the ultimate goal being the completion of school and productive citizenship.

We are currently engaged in an extensive research effort which could provide meaningful data which identifies some solutions to significant adolescent health issues, i.e., pregnancy prevention, paternal abuse and neglect, and the status of children's mental health.

It is clear that the great numbers of children who utilize our services, together with the magnitude and scope of the problems we address, that the need for such programs is not unique to this community, without the sensitivity and creative intervention afforded us by the various foundations we are working with, a project such as the Urban Affairs Corporation Adolescent Primary Health Care Center would have remained a dream.

We respectfully request that this testimony be and become a part of the Official Hearing Record.

Very truly yours,

Donna J. Bryant,
Executive Director.

The Urban Institute,
Washington, D.C., June 24, 1983.

Mr. John J. Salmon,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Salmon: I am director of the Urban Institute's Health Policy Research Center and believe that my Center's experience with foundation grants can contribute to your assessment of federal regulations affecting foundations. I am therefore requesting that you include my remarks in the hearing record.

Ford Foundation funds were largely responsible for the creation of the Urban Institute's Health Policy Research Center. Before 1976, the Institute was not heavily involved in health policy research. Although we had received a few government grants and contracts, they were insufficient to support the number of researchers needed to conduct a full-scale research program in health policy. Ford Foundation funds, used by the Institute to develop new programs, made it possible to develop a health policy program, which has contributed substantially to understanding the impacts of Medicare, Medicaid, and private insurance on the health care market.

Since 1976, our Center has depended heavily on government funding. But foundation support has remained essential in two respects: (1) to sustain research endeavors that go beyond government needs at any given time, and (2) to support development and dissemination of work initiated under government contract or grant.

Financial support independent of government grants is probably most important in sustaining a broad health policy research agenda. At any given time, the government's interests and resources are focused on specific and sometimes narrow issues. And, of course, those issues may change with administrations. without support independent of government, it becomes impossible to maintain valuable research in particular fields.

Currently, private foundation support is sustaining research initiated (but not now pursued) by government on Medicaid policies, the nursing home industry, and health care for the poor.

The Commonwealth Fund has given us a two-year, $350,000 grant to study the impact of Medicaid nursing home payment policies on costs, access and quality of care. Research to date indicates that some Medicaid policies are indeed more effective than others in obtaining service at reasonable costs, suggesting guidelines for reform of many states' current policies.

The Robert Wood Johnson Foundation has given us a two-year, $400,000 grant to study hospitals' financial status and health care for the poor. Research under that grant indicates that hospitals' financial stress relates more to hospitals' care to the poor than to inefficient management and that hospitals' concern with financial well-being leads to cutbacks in care to the poor when public or private revenues decline. In the coming year, this grant will support an empirical assessment of changes in hospitals' care to the poor and financial status between 1980 and 1982.

Without the Commonwealth and Robert Wood Johnson support, we would have found it necessary to reduce our staff and abandon long-standing and productive research efforts.

Foundation funds have also made it possible to refine government project reports, further develop project results, and disseminate findings to a wider audience than would typically read government reports. Reports prepared under government grant or contract are, appropriately, aimed at the specific interests of the grant-giving agency. Frequently, however, a project's final report is too technical for a wide audience. Furthermore, it may only touch upon important issues of secondary or peripheral interest to the funding agency. Ford Foundation funds have enabled us to build upon government reports and share their findings with the broad health research and policy community.

Foundation support has clearly been essential to sustaining our research program. I therefore urge you to look favorably upon foundation activities—in particular, on H.R. 3043, which would enhance foundations' ability to play this valuable role.

Very truly yours,

JOHN HOLAHAN,
Director, Health Policy Center.

THE URBAN INSTITUTE,
Washington, D.C., June 27, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: One year ago The Urban Institute undertook a major three-year project designed to assess the impact of recent public policy changes on private nonprofit organizations and those they serve and to chart the future of this important set of institutions.

As detailed more fully in the enclosed synopsis, this work, which is under way in sixteen sites across the country, has been made possible by an extraordinary coalition of private funding sources throughout the country. These sources include community foundations (e.g., the Rhode Island Foundation, the New York Community Trust, the Pittsburgh Foundation, the Metropolitan Atlanta Community Foundation, the Saint Paul Foundation, the Minneapolis Foundation, the Chicago Community Trust, the San Francisco Foundation) corporations and corporate foundations (e.g., General Electric, Atlantic Richfield, Shell Companies Foundation, Amaco, U.S. Steel, Pittsburgh Plate Glass, Coca-Cola, American Telephone and Telegraph, Equitable Life Assurance, Wells Fargo, Chevron, BankAmerica, General Mills), and other national and regional foundations (e.g., Rockefeller Foundation, Carnegie, Rockefeller Brothers, Charles Stewart Mott, Buhl Foundation, Richard King Mellon). A complete list of our thirty-nine sponsors is enclosed.

This project is a significant example of collaborative funding by private foundations in response to recent national policy changes. Moreover, it represents their recognition of the need for a solid base of knowledge to help guide public and private decisions about how to serve community needs in this era of governmental retrenchment, as well as the need to advance our general understanding of the nonprofit sector. The project is serving these purposes in four different ways:

First, by developing a basic overview of the nonprofit sector nationally and in our sixteen targeted local areas, in order to provide public and private decisionmakers a clearer view of the "lay of the land" with respect to the role of nonprofit organizations in serving community needs. The result should help guide local charitable decisionmaking and encourage the effective use of charitable resources. It should also be of use to national and local government officials in the allocation of public funds. The work we have undertaken will, for the first time, bring the largely invisible, private, nonprofit portion of the human service delivery system into clear focus.

Second, by analyzing the changes in federal, state, and local government activity that affect both the need for nonprofit services and the revenues available to nonprofit organizations to meet these needs. This should be of help to nonprofit managers and philanthropic organizations in setting priorities and guiding management decisions.

Third, by evaluating the whole pattern of government-nonprofit cooperation that has developed, to assess how these relationships have worked and how they might be altered or improved. This is likely to be crucial information for national, state, and local officials as they decide how to serve public needs in the three years ahead.

Finally, by examining how nonprofit and philanthropic organizations are responding to the current fiscal strains and identifying promising approaches that might be adopted more generally. This should help to ensure that the sector as a whole can benefit from innovations developed by particular organizations.

The work focuses on five major program areas: social services, health, community development and organization, employment and training, and arts and culture.

One of the more important features of this project has been the organization of a network of advisory committees involving key philanthropic, business, nonprofit, and government leaders in our project sites. These committees are giving direction to our work and providing a convenient locus for local discussions on the role of private, nonprofit action and government-nonprofit cooperation. They are also serving as a vehicle for communicating information about the private nonprofit sector to the public at large.

At a time of rapid policy change such as the present, reliable, timely information is more urgently needed than ever. This project is designed to generate such information, and to lay the firm empirical foundation we will need to guide the process of sorting out how to cope with community needs in a time of public retrenchment and change.

Recognizing that the hearings of the Oversight Subcommittee of the House Ways and Means Committee on private foundations that are about to begin limit the number of grantee witnesses who can testify to the valuable activities foundations are supporting, I respectfully request that this letter and its enclosures be made an official part of the hearing record.

Sincerely,

LESTER M. SALAMON,
Director, Center for Governance and Management Research.

Enclosures.

NONPROFIT SECTOR PROJECT

SPONSORS

Corporations or Corporate Foundations

Aetna Life & Casualty Foundation
American Telephone and Telegraph Company
Atlantic Richfield Foundation
BankAmerica Foundation
Chemical Bank
The Chevron Fund
The Coca-Cola Foundation
Equitable Life Assurance Society of the United States
The First National Bank of Atlanta
The General Electric Foundation
General Mills Foundation
H. J. Heinz Company Foundation
New York Telephone
PPG Industries Foundation
Shell Companies Foundation
Standard Oil Company (Indiana)
United States Steel Foundation, Inc.
Wells Fargo Foundation

National Foundations and Organizations

The Carnegie Corporation
Ford Foundation
Independent Sector
The John D. and Catherine T. MacArthur Foundation
Richard King Mellon Foundation
The Mott Foundation
The Rockefeller Brothers Fund
The Rockefeller Foundation

Community or Regional Foundations

The Buhl Foundation
The Bush Foundation
The Chicago Community Trust
Howard Heinz Endowment
Metropolitan Atlanta Community Foundation
The Minneapolis Foundation
The New York Community Trust
The Pittsburgh Foundation
Prince Charitable Trusts
The Rhode Island Foundation
The Saint Paul Foundation
The San Francisco Foundation
The Whitehead Foundation

THE URBAN INSTITUTE 2100 M STREET, N.W. WASHINGTON, D.C. 20037

SYNOPSIS

THE NONPROFIT SECTOR IN AN ERA OF GOVERNMENTAL RETRENCHMENT

Background

Recent federal budget cutbacks and policy changes pose a significant challenge to the strength and viability of this nation's private nonprofit organizations. These changes could affect nonprofit organizations in at least three different ways: by increasing the demand for their services, by reducing the revenues they receive from public sources, and by limiting the growth in revenue they receive from private giving.

This challenge also brings with it, however, an important opportunity--an opportunity to reassess the role and operations of this sector, to strengthen its financial base, to reevaluate its relationships with the public and business sectors, and to forge new modes of philanthropic activity and new kinds of partnership arrangements.

Objectives

Regrettably, however, the knowledge that will be needed to cope with this challenge and seize this opportunity is woefully inadequate. To overcome this, we have launched a major three-year project designed to achieve several major objectives:

- To clarify the scope and dimensions of the private, nonprofit component of the nation's service delivery system, both generally and in particular substantive areas and locales.
- To assess the impact of the Economic Recovery Program and related state and local government action on this nonprofit delivery system and those it serves.
- To analyze the evolution and consequences of nonprofit involvement with the public and private sectors and identify ways to improve government-nonprofit relations.
- To examine nonprofit and philanthropic responses to the current governmental retrenchment and identify potential improvements in nonprofit and philanthropic operations.

The Project

To pursue these objectives, The Urban Institute is undertaking an integrated set of tasks involving work at the national level and in sixteen locales across the country. This work takes two different forms:

- Top-down analysis, tapping Internal Revenue Service, Census, and other national bodies of data on the scope, structure, and financial health of the sector; and examining national budget, tax, and program developments of concern to the sector; and

- Local analysis, utilizing mail surveys, personal interviews, and case studies to examine actual developments in a cross-section of organizations in different types of communities and parts of the country. The sixteen sites include a large metropolitan area, a medium-sized metropolitan area, a small metropolitan area, and a rural county in each of the four major Census divisions in the country. The sites are:

Atlanta
Boise
Chicago
Dallas
Flint
Jackson

Minneapolis/St. Paul
New York
Phoenix
Pittsburgh
Providence
San Francisco

Fayette County, PA
Pinal County, AZ
Tuscola County, MI
Warren County, MS

Project Organization

This project is housed at The Urban Institute in Washington, D.C., and is directed by Dr. Lester M. Salamon, Director of the Institute's Center for Governance and Management Research. It also relies heavily on a network of local associates in the field sites to help conduct the data gathering and analysis.

Throughout the project, an effort will be made to involve representatives of the nonprofit and philanthropic communities in all stages of the planning and conduct of the work. To ensure this, a Technical Advisory Panel has been formed, and local advisory groups have been created in each site to assist in the design, conduct, and ultimate distribution of the results of the work.

Benefits

Aside from its obvious historical and theoretical value, the work outlined here promises to have a number of more immediate tangible benefits as well. In particular, it can:

- Assist nonprofit organizations in understanding and coping with the policy changes likely to affect them;

- Help donors sort out priorities and devise appropriate responses to the new demands;

- Provide timely feedback to government on the results of its actions;

- Help identify the planning and management needs of the sector;

- Contribute to the more efficient use of resources in responding to human needs, both locally and nationally;

THE NONPROFIT SECTOR PROJECT

Progress Report No. 2 **October 1 - December 31, 1982**

SERVING COMMUNITY NEEDS:
THE NONPROFIT SECTOR IN AN ERA OF GOVERNMENTAL RETRENCHMENT

Background

On June 1, 1982, The Urban Institute launched a major, three-year project to examine the scope and operations of the private, nonprofit sector in the United States, and to assess the impact on nonprofit organizations and those they serve of recent changes in public policy. This project is directed by Dr. Lester M. Salamon and is supported by a broad coalition of corporations, community foundations, and national foundations. It involves work at the national level and in sixteen local areas throughout the country. The aim of this effort is to help nonprofit and philanthropic organizations cope with the major changes in public policy and economic circumstances under way in our nation, and to provide a solid factual basis for the decisions now being made about the appropriate roles of government, nonprofit organizations, and businesses in addressing community needs.

A progress report outlining the background of this project and detailing the first three months of full-scale project activities was issued on October 1, 1982. The present report offers an update on project progress through early January 1983.

For further information on this project, contact: Anita MacIntosh, The Urban Institute, 2100 M Street, N.W., Washington, D.C. 20037 - 202/223-1950.

Overview

During the past three months, the Urban Institute's Nonprofit Sector Project has made steady progress in developing a solid base of information about the scope and structure of the private, nonprofit sector, and about the impact of recent changes in public policy on nonprofit organizations and those they serve. In particular, during this period:

- Five additional project sites were made fully operational bringing the total to the sixteen originally planned.
- A major survey of nonprofit organizations was successfully launched in these sixteen locales, and the returns are now coming in.
- An intensive inquiry into state and local budget developments of concern to nonprofit organizations was undertaken and is now nearing completion.
- Sessions were held with the project Advisory Committees that have been organized in each of the local sites to outline project procedures and report on early results.
- An update of *The Federal Budget and The Nonprofit Sector* was completed analyzing the action Congress took on the FY 1983 budget through December of 1982.
- Continued progress was made in assembling the necessary funding support for the project.
- Project staff have been actively involved in disseminating project findings through formal presentations, interviews, and responses to press inquiries. Interest in the results of the project remains quite high among nonprofit and philanthropic agencies and the news media.

The discussion that follows details these developments and outlines some of the early findings of our work.

1. New Sites

A central feature of this project is an effort to explore the operation of the nonprofit sector not only at the national level but also in a representative sample of local areas throughout the country. This approach was chosen because of the gross inadequacies of existing national sources of data on the sector and because of the considerable variations that exist in the role of the nonprofit sector and its interactions with government in different parts of the country and in communities of different sizes. Accordingly, we selected a "representative" large city, medium-sized city, small city, and rural area in each of the four major Census Regions (Northeast, North Central, West, and South), giving us sixteen proposed project sites in all.

At the time of the last progress report, in early October, 1982, eleven of our sixteen targeted sites were fully operational. These were:

Atlanta
Chicago
Fayette County, PA
Flint
New York
Phoenix
Pinal County, AZ
Pittsburgh
San Francisco
Tuscola County, MI
Twin Cities

The remaining five sites had all been identified and field associates recruited, but active field work had not begun. During the past three months, active work was begun in each of these sites, and advisory committees convened in all but one of them. These additional five sites are:

Boise
Dallas
Jackson
Warren County, MS
Providence

Chairpersons, Local Advisory Committees

Atlanta	Arthur C. Baxter Executive Vice President The First National Bank of Atlanta
Boise	Glenn Lungren Retired Vice President of Marketing First Security Bank
Chicago	Garry Onikl Associate Executive Director Community Renewal Society
Flint	Sybyl Atwood Executive Director Voluntary Action Center-Information and Referral Service
Jackson	Ruth Wilson Director The Governor's Office of Voluntary Citizen Participation
	E.B. Robinson, Jr. President Deposit Guaranty National Bank
Minneapolis/ St. Paul	Thomas Anding Associate Director Center for Urban and Regional Affairs University of Minnesota
New York	Horace W. Morris Executive Director New York Urban League
	Most Rev. Joseph M. Sullivan Executive Vice President Catholic Charities, Diocese of Brooklyn
Pittsburgh	The Honorable Justin M. Johnson Judge Superior Court of Pennsylvania
Providence	Andrew Hunt Vice President Kidder, Peabody and Co., Inc.
San Francisco	Barry Lastra Manager, Contributions Chevron USA, Inc.

2. Mail Survey of Nonprofit Organizations

Much of the core staff effort over the past three months was devoted to fielding and managing what we believe to be one of the most extensive, nongovernmental surveys of nonprofit organizations ever undertaken in this country. Altogether, this survey was distributed to over 8,700 nonprofit agencies in our sixteen project sites in two waves between late September and early November.

This survey seeks information on several different aspects of nonprofit operations: the activities in which the organizations are involved, the clients they serve, the sources of their funds, their budgets, the changes they have experienced over the past two years, the changes they anticipate over the next year, the kinds of adjustments they have had to make to the current retrenchment, and their opinions about a number of policy issues confronting the sector, such as the value of government support, the potential for greater use of volunteers, and the outlook for increased private support.

In view of the gross deficiencies in the existing data on this sector, one of the most difficult aspects of this effort was to develop a clear picture of the universe of nonprofit organizations in each site. Our approach was to begin with a printout of all organizations carried on the Internal Revenue Service's tax-exempt organizations standard extract files. Our local associates were then asked to supplement this by consulting local agency registers, files of government contracts, and local observers of the nonprofit and philanthropic scene.

Several interesting findings emerged from this process:

- *Incompleteness of IRS Data:* The information that the Internal Revenue Service gathers on the nonprofit sector through its Form 990 is even more incomplete and inexact than we thought. In Chicago, for example, the IRS data indicated that 1,558 nonprofit service-providing organizations existed as of 1980. Our local associate in Chicago, working with local sources, however, found 2,707 more organizations! While the disparities were not quite this large in all areas, they were quite substantial in most.
- *Vitality of the Nonprofit Sector:* The difficulty we encountered developing an accurate picture of the universe of nonprofit organizations in each of our local sites reflects, in part, the considerable vitality of the nonprofit sector. Organizations form and disappear with considerable frequency.
- *Regional Variations in Nonprofit Structure:* Considerable variations exist in the scope of the nonprofit sector in different parts of the country. Generally speaking, nonprofits appear to be far more numerous in the northeast and the midwest than they are in the south and southwest.

Sample Size: Altogether, we identified 24,667 nonprofit service organizations in our twelve urban and four rural sites. We estimate that this represents 10-15 percent of all nonprofits in the country. As reflected in Table 1, our survey was distributed to the *entire universe* of nonprofit service agencies in seven of the twelve urban sites and all four of the rural sites. In the remaining five sites, *random samples* of at least 900 nonprofit organizations were surveyed. This relatively large sample size should allow us to support observations not only at the national level, but also at the level of the individual project sites. The resulting sample of 8,700 nonprofit organizations, even with a 40-50 percent return rate, will provide an extraordinary picture of the nonprofit service sector in each of the project sites, as well as in the country at large.

Table 1

NONPROFIT ORGANIZATIONS SURVEYED IN LOCAL SITES

	Total Number of Nonprofits in Locale	Sample Size	Sample as Percent of Universe
Atlanta	609	609	100%
Boise	195	195	100
Chicago	4,296	1,215	28
Dallas	1,004	1,004	100
Fayette County, PA	72	72	100
Flint	146	146	100
Jackson, MS	297	297	100
Minneapolis/St. Paul	1,478	1,000	68
New York	8,396	1,000	12
Phoenix	412	412	100
Pinal County, AZ	62	62	100
Pittsburgh	1,445	910	63
Providence	602	602	100
San Francisco	5,374	1,150	21
Tuscola County, MI	21	21	100
Warren County, MS	29	29	100
TOTAL	24,687	8,724	35%

Response Rates: Table 2 records the responses to this mail survey to date. Compared to recent, comparable surveys, which have had return rates of about 30 percent, our return rate to date is extremely encouraging. Overall, the return rate is over 40 percent. In some places, it exceeds 50 percent. Followup procedures are still underway in many locales with the aid of our local advisory committees.

Table 2

RESPONSE RATES FROM NONPROFIT SURVEY

	Organizations Surveyed	Organizations Responding*	Response Rate
Atlanta	609	303	49.8
Boise	195	126	64.6
Chicago	1,215	483	39.8
Dallas	1,004	354	35.3
Fayette County, PA	72	25	34.7
Flint	146	101	69.2
Jackson, MS	297	117	39.4
Minneapolis/St. Paul	1,000	557	55.7
New York	1,000	318	31.8
Phoenix	412	198	48.1
Pinal County, AZ	62	32	51.6
Pittsburgh	910	408	44.8
Providence	602	315	52.3
San Francisco	1,150	398	34.6
Tuscola County, MI	21	12	57.1
Warren County, MS	29	15	51.7
TOTAL	8,724	3,762	43.1

*As of January 28, 1983, includes invalid and dead organizations.

We are now in the middle of editing the questionnaires in preparation for keypunching and, eventually, analysis. The editing process involves making sure that answers are in the spaces provided and that the questionnaires do not have glaring internal inconsistencies that must be clarified prior to keypunching. We anticipate that another two months will be required to complete this process with the kind of care we think is needed.

3. Early Nonprofit Responses to Government Budget Cuts

During the summer and early fall of 1982, our local associates inteviewed key nonprofit and philanthropic leaders in our target communities to get some sense of initial responses to federal budget cuts and program reforms. Among the more salient findings that emerged from this effort were these:

- *A Climate of Apprehension:* Except for organizations involved in the federal employment and training programs (which included many arts organizations), most organizations were only beginning to feel the effects of federal budget cuts. At the same time, there appears to be a pervasive climate of apprehension and uncertainty within the nonprofit community that is significantly affecting morale and management.

- *Changing Fundraising Strategies:* Many nonprofit organizations are planning to alter their fundraising strategies to focus more on private sources of support, although these changes had not yet found reflection in major increases in the number of requests for funding from foundations, corporations, and federated funding organizations as of the summer of 1982. While the *number* of funding requests does not appear to have increased massively, the *amounts* requested appear to have increased considerably. There is evidence from interviews with contributions managers and administrators of federations that requests are being subjected to greater scrutiny and that many grantmakers are paying more attention to planning and are reevaluating their giving policies. There is also some evidence of a limited shift of private support away from the arts and toward social services.

- *Coalition Formation:* Initial nonprofit responses to word of the budget cuts frequently involved the formation of coalitions to share information and lobby against the impending cuts. With only a few exceptions, however, these coalitions have been slow to gather momentum and have focused primarily on sharing of information. Few of these coalitions have succeeded in restoring funds scheduled to be cut, or in promoting longer term management changes.

- *Service Strains:* The budget stringency has limited the nonprofit sector's ability to respond to the new demands for service produced by the economic recession. Food pantries and other forms of emergency assistance have consequently had to be devised.

4. State and Local Budget Analysis

To complement the work we have done analyzing the federal budget developments and program reforms of concern to the nonprofit sector, we have undertaken an elaborate assessment of comparable developments at the state and local government levels in each of our target locales. In particular, this work has three principal objectives:

- To examine state and local spending on program areas of concern to nonprofit organizations and determine whether state and local governments are compensating, in whole or in part, for cutbacks in federal spending in these program areas. Five program areas in particular, representing traditional areas of nonprofit action, are being examined in this way:
  - — social services
  - — employment and training
  - — housing, community development and community organization
  - — health
  - — arts, culture, and recreation.

Local Associates

Atlanta	Winsome Hawkins Research Atlanta
Boise	David A. Johnson Associate Professor of Social Work Boise State University
Chicago	Kirsten Gronbjerg Associate Professor of Sociology Loyola University of Chicago
Dallas	Mark S. Rosentraub Associate Professor and Director Urban and Regional Affairs Division University of Texas at Arlington
Flint	Peter R. Gluck Professor of Political Science Director of the Master of Public Administration Program University of Michigan-Flint
Jackson	Stephen L. Rozman Associate Professor of Political Science Chairman, Political Science Department and Social Science Division Tougaloo College
Minneapolis/ St. Paul	Barbara Lukermann Senior Fellow, Hubert Humphrey School of Public Affairs University of Minnesota
New York	David A. Grossman President The Nova Institute
Phoenix	John S. Hall Associate Professor, Center for Public Affairs Director, Center for Urban Studies Arizona State University
Pittsburgh	Roslyn C. Katz Planning Director Health and Welfare PLANNING Association
Providence	Diane M. Disney Instructor College of Business Administration University of Rhode Island
San Francisco	Judy Pope Program Associate Zellerbach Family Fund

- To determine the extent to which state and [illegible] governments turn to nonprofit agencies to assist [illegible] in delivering services locally, and to assess [illegible] nonprofit-organization revenues are consequently being affected by state and local budget decisions.

- To examine the factors that seem to encourage [illegible] and local governments to use, or not use, nonprofit agencies in the delivery of local services, and to assess the value of this relationship for both parties.

Work on this portion of the project is being carried out by our Local Associates in each of our field sites. The task has turned out to be even more time-consuming and tedious than we anticipated. Different levels of government (state, county, city) have different fiscal years and keep records in different ways and with different degrees of detail. Our associates have had to assemble data from literally dozens of different agencies at all levels of government and have frequently had to ask agency officials to assemble information that had never been assembled before (e.g., information on the extent of contracting out to nonprofit providers). As a result, this portion of our first-year agenda is approximately eight weeks behind schedule. However, more than half of the reports based on this work are now in our hands and the remaining ones are well along.

Although we are just beginning to analyze these data, several preliminary observations are already possible:

- ***Regional Variations in Government Reliance on Nonprofits:*** There are vast differences in the extent to which local governments rely on nonprofit organizations in different parts of the country. In New York City, for example, government contracts well over half of the social service provision out to nonprofit agencies. In Boise, by contrast, less than 20 percent of the public sector's social service budget is handled in this way. Generally speaking, less reliance is placed on nonprofits in delivering publicly funded services in the South than in other parts of the country.

- ***Variations in Reliance on Nonprofits Among Service Areas:*** Local government reliance on nonprofit organizations to help deliver publicly funded services varies widely among service areas. Generally speaking, such reliance appears to be highest in the employment and training and social services areas. It is lowest in housing and community development.

- ***Inadequate Data on Local Government Contracting with Nonprofits:*** Existing data on state and local contracting with nonprofit organizations is extremely poor. Few local governments keep comprehensive records on the extent of such contracting and these data are frequently unavailable at the departmental level as well.

We are confident that the data we are collecting through this task will constitute one of the most comprehensive overviews ever developed of government spending in areas of interest to nonprofit organizations, and of nonprofit revenues from public sources, in these locations. These data should provide an extremely useful information source for local priority-setting and decision-making.

5. National Budget Update

In the first published product of this project, *The Federal Budget and the Nonprofit Sector*, (The Urban Institute Press, 1982), we analyzed the implications for nonprofit organizations of the budget proposals advanced by the Reagan Administration for FY 1983 and beyond, and the early action on those proposals by the Congress. Our conclusion was that federal spending on programs of interest to nonprofit organizations would decline by $115 billion (in constant 1980 dollars) below 1980 levels over the period FY 1982-1985 under the Adminitration's proposals, and that nonprofit organizations stood to lose $33 billion in revenues over the same period as a consequence, including $8 billion in FY 1983 alone.

In the closing hours of its December 1982 lame-duck session, Congress took additional action on the budget for FY 1983 by passing an omnibus Continuing Resolution setting FY 1983 spending levels for all agencies for which formal appropriations bills have not yet passed. Since this is likely to be the closest we will come this year to a congressionally approved FY 1983 budget, we have completed a preliminary analysis of this continuing resolution, and of the FY 1983 appropriations bills passed to date.

The tentative results of this analysis, reported in Table 3, are quite interesting. What they reveal is that:

- Congress generally extended the budget reductions in areas of interest to nonprofit organizations that it enacted last year as part of the FY 1982 budget process, but it did not accept many of the additional reductions the Administration had requested for FY 1983.

- Federal spending on programs of interest to nonprofit organizations will thus be an estimated $16.1 billion lower in FY 1983 than it was in FY 1980, after adjusting for inflation. This represents about 58 percent of the $27.9 billion in reductions below FY 1980 levels proposed by the Administration for these programs.

- Of the areas examined here, Congress departed from Administration proposals for FY 1983 spending especially sharply in employment and training and social services.

- These congressional actions mean that nonprofit revenues from federal sources in FY 1983 seem likely to be approximately $5 billion below 1980 levels, after adjusting for inflation, rather than the $8 billion estimated on the basis of the Administration's original proposals. If no further departures from Administration proposals occur in FY 1984 and FY 1985, nonprofit revenues from federal sources will decline by $30 billion during the period FY 1982-85, rather than the $33 billion estimated on the basis of the original Administration proposals. If Congress follows the same course in FY 1984 and FY 1985 that it did in FY 1983 — accepting only about 60 percent of the cuts proposed for these programs by the Administration — nonprofit revenues from federal sources will decline by something closer to $21-$23 billion in relation to FY 1980 actual levels over this period.

Table 3

FEDERAL SPENDING IN SELECTED BUDGET FUNCTIONS, FY 1983 PRESIDENTIAL PROPOSALS AND FY 1983 CONGRESSIONAL ACTIONS COMPARED TO FY 1980 and FY 1982 OUTLAYS, IN CONSTANT 1980 DOLLARS*
($ billions)

Budget Function	FY 1980 Actual Outlays	Change from FY 1980 Outlays: FY 1982 Actual Outlays	FY 1983 Pres. Budget	FY 1983 Congress to Date**	FY 1983 Cuts Made by Congress to Date as a Percent of Pres. Proposed Cuts
Education	$ 13.8	-$ 0.7	-$ 3.3	-$ 1.3	39%
Training & Employment	19.9	- 5.8	- 8.2	- 6.1	74%
Social Services	6.1	- 0.7	- 2.0	- 0.9	45%
Community & Regional Development	10.1	- 3.0	- 4.3	- 3.9	91%
Health	53.2	- 3.5	- 6.3	- 3.6	57%
Income Assistance	30.7	+ 0.7	- 2.7	+ 0.6	——
International Affairs	10.7	- 1.3	- 1.1	- 0.8	73%
TOTAL	$143.5	-$14.3	-$27.9	-$16.1	58%

*Special deflator for Health.
**Reflects passage of the Continuing Resolution and Appropriations Bills through December 1982.

6. Other Developments

In addition to the progress reported above, there has been activity as well in a number of other areas:

- ***Background Report on the Sector:*** A third Local Research Guide has been prepared and distributed to our Local Associates to aid them in gathering background information on the historical development of the nonprofit sector in their locales. This information is needed to help us put current developments into perspective and to help us explain the current role and structure of the sector and the current pattern of its involvement with government and private business.

- ***Religious Congregation Survey:*** In order to determine whether religious congregations are picking up a larger share of the human service delivery activity formerly handled by government or other nonprofit organizations, we are planning a survey of religious congregations in our sample sites. The focus of this survey will be on the direct service delivery activities of religious congregations (as opposed to their fundraising and distribution activities, which are covered in our agency survey). This will be the first major survey of this sort except for the Filer Commission's somewhat more narrow survey in the mid-1970s. We plan to mail surveys to a total of approximately 2,200 congregations in our sample sites. Each will contain a cover letter from local religious leaders in the site urging cooperation with the survey. The survey is scheduled for distribution in February.

- ***Local Advisory Committees:*** Initial meetings of our advisory committees were held during this period in Flint, Chicago, San Francisco, Jackson, Providence, and New York. Second meetings were held in the Twin Cities, Atlanta, Chicago, and Pittsburgh. We have been extremely encouraged by the enthusiasm this project continues to enjoy locally and by the way in which our local committees are keeping us in touch with local developments and sensitizing us to local needs.

- ***Communications and Outreach.*** Publication of *The Federal Budget and the Nonprofit Sector* in September resulted in a substantial number of press inquiries, requests for briefings, interviews, and coverage of our work. Formal presentations have been provided to: the Social Policy Committee of the U.S. Conference of Mayors, the Board of Directors of the Arts Alliance, the staff of the U.S. House and Senate, the 501(c)(3) Group, the YMCA Governmental Affairs Committee, the Governmental Affairs Committee of the Federation of Jewish Philanthropies, and others.

  There has also been considerable local interest in the project in our target locales. Press releases announcing the project and naming the local advisory committees were picked up by local papers in nearly all of our sites. Stories on our work have also appeared in the national media, including *Newsweek, U.S. News and World Report*, and CBS News. This work was featured on the CBS Morning News on December 27, 1982.

- ***Funding:*** Several additional organizations have committed support to the project over the past several months. These include: the Rhode Island Foundation, the Prince Charitable Trusts, Aetna Life & Casualty, American Telephone and Telegraph, New York Telephone, and Chemical Bank.

- ***Frontiers in Philanthropy:*** As an offshoot of our core nonprofit sector work, we have begun work on a complementary project designed to explore new approaches to philanthropy that leverage charit resources and thereby make more efficient use of th We have received a grant from Chemical Bank to be this work, and will be trying to identify other pot sources of aid over the next few months.

We believe improvements in the basic "technology" philanthropy may be one of the most important resu of the current retrenchment and therefore one of th most important areas for systematic analysis.

Sponsors of the Nonprofit Sector Project

Aetna Life & Casualty Foundation
American Telephone and Telegraph Company
Atlantic Richfield Foundation
BankAmerica Foundation
The Buhl Foundation
Carnegie Corporation of New York
Chemical Bank
The Chevron Fund
The Chicago Community Trust
The Coca-Cola Foundation
Equitable Life Assurance Society of the United States
Ford Foundation
The General Electric Foundation
General Mills Foundation
H.J. Heinz Company Foundation
Howard Heinz Endowment
Independent Sector
John D. and Catherine T. MacArthur Foundation
Richard King Mellon Foundation
Metropolitan Atlanta Community Foundation
The Minneapolis Foundation
Charles Stewart Mott Foundation
The New York Community Trust
New York Telephone
The Pittsburgh Foundation
PPG Industries Foundation
Prince Charitable Trusts
The Rhode Island Foundation
The Rockefeller Brothers Fund
The Rockefeller Foundation
The Saint Paul Foundation
The San Francisco Foundation
Shell Companies Foundation
Standard Oil Company (Indiana)
United States Steel Foundation, Inc.
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WEBSTER, JORDAN, OLIVER & WALTERS,
Winterset, Iowa, June 8, 1983.

Hon. CHARLES B. RANGEL,
House Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN RANGEL: I noticed in the May 25th issue of the Wall Street Journal that your Ways and Means Subcommittee would be holding hearings to explore private foundations.

Our office has several testamentary charitable trusts which are being administered in the District Court of the State of Iowa. The definition of a private foundation as contained in the 69 Act is so broad as to include not only private foundations established by living persons and organizations but all testamentary charitable trusts.

It is my understanding that the 69 Act provided for reports by private foundations, and the excise tax to be levied on the income of the private foundations was for the purpose of a comprehensive study of all private foundations, including charitable trusts, and as the basis for information and reporting to Congress. The excise tax was levied to cover the cost of this study; the excise tax was reduced from 4% to 2% a few years ago because the levy was producing more than the cost of the study.

I have no way of knowing what Internal Revenue Service will report to Congress concerning private charities, but I do wish to point out that the reports required by Internal Revenue Service of private foundations is burdensome, unduly detailed, and after a period of 14 years, constitute a waste of time on the part of the responsible officers of the foundation. In support of this contention, I am enclosing a copy of form 990-PF which we recently filed in connections with a testamentary trust with assets of approximately $100,000. This trust provides for grants to handicapped persons to obtain an education or vacational training. We have been filing reports in this testamentary trust, and other similar trusts, for a period of years. Each year Internal Revenue Service changes the format of the report, dropping some questions and asking other questions, and requires information which almost necessitates the hiring of an accountant who is trained in the matter of such reports.

I would like to make the following suggestions for the consideration of your subcommittee:

1. The 69 Act be repealed in its entirety.

2. Any new law should address itself to the correction of major abuses of the avowed purpose of public charities.

3. If Congress wishes to continue the requirement for reports, then I would recommend the following:

a. Court administered testamentary charitable trusts be exempt from the definition of private foundations;

b. Private foundations having total assets of less than $500,000 or income of less than $50,000 be entirely exempt from filing reports;

c. The form of the return be simplified to address itself to the abuses sought to be corrected.

Your subcommittee must recognize that it is impossible to so regulate every private charitable foundation as to prevent any abuse of the purpose of charitable foundations. The cost of such an Utopian concept would be almost prohibitive and would cause more of a loss to private charities than would be gained.

Sincerely yours,

SHIRLEY A. WEBSTER.

Form **990-PF**

Department of the Treasury
Internal Revenue Service

Return of Private Foundation

or Section 4947(a)(1) Trust Treated as a Private Foundation

Note: You may be able to use a copy of this return to satisfy State reporting requirements.

OMB No. 1545-0052

1982

For the calendar year 1982, or tax year beginning , 1982, and ending , 19

Please type, print, or attach label. See Specific Instructions.

Name of organization: Abner & Eliza Black Memorial Fund

Address (number and street): c/o Webster, Jordan, Oliver & Walters Law Office

City or town, State, and ZIP code: F & M Bank Building
Winterset, Iowa 50273

Employer identification number: 42 | 6062134

State registration number (see instructions): Iowa

If the foundation is in a 60-month termination under section 507(b)(1)(B) check here ▶ ☐

If address changed, check here ▶ ☐ Foreign organizations, check here ▶ ☐

Fair market value of assets at end of year: 101599

Check type of organization
☒ Exempt private foundation ☐ 4947(a)(1) trust ☐ Other taxable private foundation

Check this box if your private foundation status terminated under section 507(b)(1)(A) ▶ ☐

Section 4947(a)(1) trusts filing this form in lieu of Form 1041, check here and see general instructions ▶ ☐

The books are in care of ▶ WEbster, Jordan, Oliver & Walters

Located at ▶ Winterset, Iowa Telephone no. ▶ (515)462-3731

Part I Analysis of Revenue and Expenses (See instructions for Part I)

		(A) Revenue and expenses per books	(B) Computation of net investment income	(C) Computation of adjusted net income	(D) Disbursements for charitable purpose
Revenue	1 Contributions, gifts, grants, etc. (attach schedule)	0			
	2 Contributions from split-interest trusts		0		
	3 Membership dues and assessments	0			
	4 Interest on savings and temporary cash investments	384	384	384	
	5 Dividends and interest from securities	7958	7958	7958	
	6 Gross rents	0	0	0	
	7 Net gain or (loss) from sale of assets not on line 11	0			
	8 Capital gain net income		0		
	9 Net short-term capital gain			0	
	10 Income modifications			0	
	11 Gross profit from any business activities: (Gross receipts ▶ $ 0 minus cost of sales ▶ $)	0		0	
	12 Other income (attach schedule)	0	0	0	
	13 Total—add lines 1 through 12	8342	8342	8342	
Expenses	14 Compensation of officers, etc.	300	300	300	300
	15 Other salaries and wages	0	0	0	0
	16 Pension plans, employee benefits				
	17 Investment, legal, and other professional services	213	213	213	213
	18 Interest				
	19 Taxes (attach schedule)				
	20 Depreciation and depletion				
	21 Occupancy				
	22 Other expenses (attach schedule) Trustee's bond $40 Publication of Notice $7	47	47	47	47
	23 Contributions, gifts, grants (from Part XIII)	7550			7550
	24 Total—add lines 14 through 23	8110	560	560	8110
25	(a) Excess of revenue over expenses: Line 13 minus line 24				
	(b) Net investment income (if negative, enter -0-)		7782		
	(c) Adjusted net income (if negative, enter -0-)			7782	

Part II Excise Tax On Investment Income (Section 4940(a), 4940(b), or 4948—See Instructions)

1 Domestic organizations enter 2% of line 25(b). Exempt foreign organizations enter 4% of line 25(b)		155.64
2 Tax under section 511 (exempt foundations and exempt foreign organizations enter -0-)		
3 Add lines 1 and 2		155.64
4 Tax under subtitle A (exempt foundations and exempt foreign organizations enter -0-)		
5 Tax on investment income (line 3 minus line 4 (but not less than -0-))		155.64
6 Credits: (a) Exempt foreign organizations—tax withheld at source		
(b) Tax paid with application for extension of time to file (Form 2758)		
7 Tax due (line 5 minus line 6) Pay in full with return. Make check or money order payable to Internal Revenue Service (Write employer identification number on check or money order) ▶		155.64
8 Overpayment—(line 6 minus line 5)		

For Paperwork Reduction Act Notice, see page 1 of the instructions.

COPY

5 4 83

Part III Balance Sheets Any required schedules should be for end of year amounts only.

		Beginning of Year	End of Year	
		(A) Book Value	(B) Book Value	(C) Fair Market Value
Assets	1 Cash—non-interest bearing	7575	7913	7913
	2 Savings and temporary cash investments			
	3 Accounts receivable ▶			
	minus allowance for doubtful accounts ▶			
	4 Pledges receivable ▶			
	minus allowance for doubtful accounts ▶			
	5 Grants receivable			
	6 Receivables due from officers, directors, trustees, and other disqualified persons (see instructions)			
	7 Other notes and loans receivable ▶			
	minus allowance for doubtful accounts ▶			
	8 Inventories for sale or use			
	9 Prepaid expenses and deferred charges			
	10 Investments—securities (attach schedule) statement attached	80529	80529	93686
	11 Investments—land, buildings, and equipment: basis ▶			
	minus accumulated depreciation (attach schedule) ▶			
	12 Investments—mortgage loans			
	13 Investments—other (attach schedule)			
	14 Land, buildings, and equipment: basis ▶			
	minus accumulated depreciation (attach schedule) ▶			
	15 Other assets (Describe ▶)			
	16 Total assets (add lines 1 through 15)	88104	88442	101599
Liabilities	17 Accounts payable and accrued expenses			
	18 Grants payable			
	19 Support and revenue designated for future periods (attach schedule)			
	20 Loans from officers, directors, trustees, and other disqualified persons			
	21 Mortgages and other notes payable (attach schedule)			
	22 Other liabilities (Describe ▶)			
	23 Total liabilities (add lines 17 through 22)			
Fund Balances or Net Worth	Organizations that use fund accounting, check here ▶ ☐ and complete lines 24 through 27 and lines 31 and 32.			
	24 (a) Current unrestricted fund			
	(b) Current restricted funds			
	25 Land, buildings, and equipment fund			
	26 Endowment fund			
	27 Other funds (Describe ▶)			
	Organizations not using fund accounting, check here ▶ ☐ and complete lines 28–32.			
	28 Capital stock or trust principal			
	29 Paid-in or capital surplus			
	30 Retained earnings or accumulated income			
	31 Total fund balances or net worth (see instructions)			
	32 Total liabilities and fund balances/net worth (see instructions)			

Part IV Analysis of Changes in Net Worth or Fund Balances

1 Total net worth or fund balances at beginning of year—Part III, Column (A), line 31	
2 Enter amount from Part I, line 25(a)	
3 Other increases not included in line 2 (itemize) ▶	
4 Add lines 1, 2, and 3	
5 Decreases not included in line 2 (itemize) ▶	
6 Total net worth or fund balances at end of year (line 4 minus line 5)—Part III, Column (B), line 31	

Part V Statements Regarding Activities

File Form 4720 if you answer "No" to question 10(b), 11(b), or 14(b) or "Yes" to question 10(c), 12(b), 13(a), or 13(b).

	Yes	No
1 (a) During the tax year, did you attempt to influence any national, State, or local legislation or did you participate or intervene in any political campaign?		X
(b) Did you spend more than $100 during the year (either directly or indirectly) for political purposes (see instructions for definition)?		X
If you answered "Yes" to 1(a), or (b), attach a detailed description of the activities and copies of any materials published or distributed by the organization in connection with the activities.		
(c) Did you file Form 1120–POL?		X

SUPPLEMENTARY INFORMATION - PART III - Item 10.

STATEMENT OF ASSETS ON HAND

U. S. TREASURY NOTES;

			Market Value	
$10,000 - 11.625%	Due	5-15-83	$10,100	
2,000 - 8 3/4%	Due	11-15-88	1,880	- Total $11,880

STOCKS:

	Shares	Cost	Market Value
Allied Chemical	200	$9,585.50	$ 6,656
Standard Oil of Indiana NOTE: 500 shares of Standard Oil of Indiana are being held by Shearson American Express pending either sale or reissue.	800	7,083.54	32,000
American Telephone & Telegraph	200	4,600.00	4,850
American Telephone & Telegraph	100	5,735.00	9,700
Consolidated Edison NOTE: These shares represent a stock split of 2 for 1 in 1982.	600	7,837.50	12,000
General Motors	100	7,171.13	6,200
Phillips Petroleum	200	2,519.19	6,400

Total Stocks - $77,806

CERTIFICATE OF DEPOSIT:

$4,000 CD issued by Farmers & Merchants State Bank, Winterset, Iowa, due 30 months from February 18, 1982. - $4,000

BANK ACCOUNT:

Balance in NOW account, as shown by Statement of Receipts and Disbursements, in Farmers & Merchants State Bank, Winterset, Iowa:

Income Account -	$ 7,749.34
Principal Account	163.82

TOTAL ASSETS.....$101,599.16

Part V Statements Regarding Activities (continued)

	Yes	No
2 Have you engaged in any activities which have not previously been reported to the Internal Revenue Service?		X
If "Yes" attach a detailed description of the activities.	▨	▨
3 Have you made any changes, not previously reported to the IRS, in your governing instrument, articles of incorporation, or bylaws, or other similar instruments?		X
If "Yes" attach a conformed copy of the changes.	▨	▨
4 (a) Did you have unrelated business gross income of $1,000 or more during the year?		X
(b) If "Yes" have you filed a tax return on Form 990–T for this year?		
5 Was there a liquidation, termination, dissolution, or substantial contraction during the year?		X
If "Yes" attach a schedule for each asset disposed of showing: the type of asset, the date of disposition, its cost or other basis, its fair market value on date of disposition, and the name and address of each recipient to whom assets were distributed. (See General Instruction I.)	▨	▨
6 Are the section 508(e) requirements satisfied either: • by language written into the governing instrument, or • by State legislation that effectively amends the governing instrument so that no mandatory directions that conflict with the State law remain in the governing instrument?		X
7 Did you have at least $5,000 in assets at any time during the year?	X	
If "Yes" complete Part III, Column (C) and Part XIII.	▨	▨
8 (a) Enter States to which the foundation reports or with which it is registered (see instructions) ▶ Iowa	▨	▨
(b) If you answered 7 "Yes" have you furnished a copy of Form 990–PF to the Attorney General (or his or her designate) of each State as required by General Instruction K.1? If "No" attach explanation.	X	
9 Are you claiming status as an operating foundation within the meaning of sections 4942(j)(3) or 4942(j)(5) for calendar year 1982 or fiscal year beginning in 1982 (see instructions for Part XII)? *If "Yes," complete Part XII.*		X
10 Self-dealing (section 4941): **(a)** During the year did you (either directly or indirectly):	▨	▨
(1) Engage in the sale, or exchange, or leasing of property with a disqualified person?		X
(2) Borrow money from, lend money to, or otherwise extend credit to (or accept it from) a disqualified person?		X
(3) Furnish goods, services, or facilities to (or accept them from) a disqualified person?		X
(4) Pay compensation to or pay or reimburse the expenses of a disqualified person?		X
(5) Transfer any of your income or assets to a disqualified person (or make any of either available for the benefit or use of a disqualified person)?		X
(6) Agree to pay money or property to a government official? (Exception: check "No" if you agreed to make a grant to or to employ the official for a period after he or she terminates government service if he or she is terminating within 90 days.)		X
(b) If you answered "Yes" to any of the questions 10(a)(1) through (6), were the acts you engaged in excepted acts as described in regulations section 53.4941(d)–3 and 4?		
(c) Did you engage in a prior year in any of the acts described in 10(a), other than excepted acts, that were acts of self-dealing that were not corrected by the first day of your tax year beginning in 1982?		X
11 Taxes on failure to distribute income (section 4942) (does not apply for years you were an operating foundation as defined in section 4942(j)(3) or 4942(j)(5)):	▨	▨
(a) Did you at the end of tax year 1982 have any undistributed income (lines 6(b) and (c), Part XI) for tax year(s) beginning before 1982?		X
If "Yes" list the years ▶ ...., ..., ..., ...	▨	▨
(b) If "Yes" to (a) above, are you applying the provisions of section 4942(a)(2) (relating to incorrect valuation of assets) to the undistributed income for ALL such years?		
(c) If the provisions of section 4942(a)(2) are being applied to ANY of the years listed in (a) above, list the years here and see the instructions ▶ ...., ..., ..., ...	▨	▨
12 Taxes on excess business holdings (section 4943):		
(a) Did you hold more than 2% direct or indirect interest in any business enterprise at any time during the year?		X
(b) If "Yes" did you have excess business holdings in 1982 as a result of any purchase by you or disqualified persons after May 26, 1969; after the lapse of the 5-year period to dispose of holdings acquired by gift or bequest; or after the lapse of the 10-year first phase holding period? **Note:** *You may use Schedule C, Form 4720, to determine if you had excess business holdings in 1982.*	▨	▨
13 Taxes on investments which jeopardize charitable purposes (section 4944): **(a)** Did you invest during the year any amount in a manner that would jeopardize the carrying out of any of your charitable purposes?		X
(b) Did you make any investment in a prior year (but after December 31, 1969) that could jeopardize your charitable purpose that you had not removed from jeopardy on the first day of your tax year beginning in 1982?		X

Part V Statements Regarding Activities (continued)

	Yes	No
14 Taxes on taxable expenditures (section 4945):		
(a) During the year did you pay or incur any amount to:		
(1) Carry on propaganda, or otherwise attempt to influence legislation by attempting to affect the opinion of the general public or any segment thereof, or by communicating with any member or employee of a legislative body, or by communicating with any other government official or employee who may participate in the formulation of legislation?		X
(2) Influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive?		X
(3) Provide a grant to an individual for travel, study, or other similar purposes?	X	
(4) Provide a grant to an organization, other than a charitable, etc., organization described in paragraph (1), (2), or (3) of section 509(a)?		X
(5) Provide for any purpose other than religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals?		X
(b) If you answered "Yes" to any of questions (a)(1) through (a)(5), were all such transactions excepted transactions as described in regulations section 53.4945?		
(c) If you answered "Yes" to question 14(a)(4), do you claim exemption from the tax because you maintained expenditure responsibility for the grant? *If "Yes" attach the statement required.*		
15 Did any persons become substantial contributors during the tax year? *If "Yes" attach a schedule listing their names and addresses.*		X

Part VI Statement Regarding Officers, Compensation, etc.

1 Officers, directors, trustees, foundation managers and their compensation, if any, for 1982:

Name and address	Title, and average hours per week devoted to position	Contributions to employee benefit plans	Expense account, other allowances	Compensation
Mary Jane Benoit, Winterset, IA 50273	Trustee			100
Glen Almquist, Winterset, IA 50273	Trustee			100
Shirley A. Webster, Winterset, IA 50273	Trustee			100
Total				

2 Compensation of five highest paid employees for 1982 (other than included in 1 above—see instructions):

Name and address of employees paid more than $30,000	Title, and time devoted to position	Contributions to employee benefit plans	Expense account, other allowances	Compensation
Total number of other employees paid over $30,000 ▶				

3 Five highest paid persons for professional services for 1982 (see instructions):

Name and address of persons paid more than $30,000	Type of service	Compensation
Total number of others receiving over $30,000 for professional services ▶		

Part VII Capital Gains and Losses for Tax on Investment Income

	a. Kind of property. Indicate security, real estate, or other (specify)	b. Description (examples: 100 sh. of "Z" Co., 2 story brick, etc.)	c. How acquired P—Purchase D—Donation	d. Date acquired (mo., day, yr.)	e. Date sold (mo., day, yr.)
1					

f. Gross sales price minus expense of sale	g. Depreciation allowed (or allowable)	h. Cost or other basis	i. Gain or (loss) (f plus g minus h)

Complete only for assets showing gain in column i and owned by the foundation on 12/31/69

j. F.M.V. as of 12/31/69	k. Adjusted basis as of 12/31/69	l. Excess of col. j over col. k, if any	m. Losses (from col. i) Gains (excess of col. i gain over col. l, but not less than zero)

2 Capital gain net income or (net capital loss) . { If gain, also enter in Part I, line 8 / If (loss) enter –0– in Part I, line 8 } . . .

3 Net short-term capital gain (loss) as defined in section 1222(5) and (6)
If gain, also enter in Part I, column (C), line 9 (see instructions for line 9)
If loss, enter –0– in Part I, column (C), line 9 . . . .

Part VIII Minimum Investment Return for 1982

1 Fair market value of assets not used (or held for use) directly in carrying out charitable, etc., purposes:	
(a) Average monthly fair market value of securities	93686
(b) Average of monthly cash balances	5000
(c) Fair market value of all other assets (see instructions)	
(d) Total (add lines (a), (b), and (c))	98686
2 Acquisition indebtedness applicable to line 1 assets	0
3 Line 1(d) minus line 2	
4 Cash deemed held for charitable activities—enter 1½% of line 3 (for greater amount, see instructions) . .	5000
5 Line 3 minus line 4	93686
6 Enter 5% of line 5	4684

Part IX Computation of Distributable Amount for 1982 (See instructions)

1 Minimum investment return from Part VIII, line 6		4684
2 Total of:		
(a) Tax on investment income for 1982 from Part II, line 5	155	
(b) Income tax under subtitle A, for 1982		155
3 Distributable amount (line 1 minus line 2)		4529
4 Adjustments to distributable amount		0
5 Distributable amount as adjusted (line 3 plus or minus line 4)—also enter in Part XI, line 1		4529

Part X Qualifying Distributions in 1982 (See instructions)

1 Amounts paid (including administrative expenses) to accomplish charitable, etc., purposes:	
(a) Expenses, contributions, gifts, etc.—total from Part I, column (D), line 24	8110
(b) Program-related investments	
2 Amounts paid to acquire assets used (or held for use) directly in carrying out charitable, etc., purposes	
3 Amounts set aside for specific charitable projects that satisfy the:	
(a) Suitability test (prior IRS approval required)	
(b) Cash distribution test (attach the required schedule)	
4 Total qualifying distributions made in 1982 (add lines 1, 2, and 3)—also enter in Part XI, line 4	8110

Part XI Computation of Undistributed Income (See instructions)

	(a) Corpus	(b) Years prior to 1981	(c) 1981	(d) 1982
1 Distributable amount for 1982 from Part IX				
2 Undistributed income, if any, as of the end of 1981				
(a) Enter amount for 1981				
(b) Total for prior years: ...., ..., ...				
3 Excess distributions carryover, if any, to 1982:				
(a) From 1977				
(b) From 1978				
(c) From 1979				
(d) From 1980				
(e) From 1981				
(f) Total of 3(a) through (e)				
4 Qualifying distributions for 1982 ( )				
(a) Applied to 1981, but not more than line 2(a)			( )	
(b) Applied to undistributed income of prior years (Election required)		( )		
(c) Treated as distributions out of corpus (Election required)				
(d) Applied to 1982 distributable amount				( )
(e) Remaining amount distributed out of corpus				
5 Excess distributions carryover applied to 1982 (If an amount appears in column (d), the same amount must be shown in column (a))	( )			( )
6 Enter the net total of each column as indicated below:				
(a) Corpus. Add lines 3(f), 4(c), and 4(e). Subtract line 5				
(b) Prior years' undistributed income. Line 2(b) minus line 4(b)		(b)		
(c) Enter the amount of prior year's undistributed income for which a notice of deficiency has been issued, or on which the section 4942(a) tax has been previously assessed		(c)		
(d) Subtract line 6(c) from line 6(b). This amount is taxable—(see instructions)		(d)		
(e) Undistributed income for 1981. Line 2(a) minus line 4(a). This amount is taxable—(see instructions)				
(f) Undistributed income for 1982. Line 1 minus lines 4(d) and 5. This amount must be distributed in 1983				
7 Amounts treated as distributions out of corpus to satisfy requirements imposed by section 170(b)(1)(D) or 4942(g)(3) (see instructions)	( )			
8 Excess distributions carryover from 1977 not applied on line 5 or line 7 (see instructions)	( )			
9 Excess distributions carryover to 1983. (Line 6(a) minus lines 7 and 8.)				
10 Analysis of line 9:				
(a) Excess from 1978				
(b) Excess from 1979				
(c) Excess from 1980				
(d) Excess from 1981				
(e) Excess from 1982				

Part XII Private Operating Foundations (See instructions and Part V, Question 9)

1 (a) If the foundation has received a ruling or determination letter that it is an operating foundation, and the ruling is effective for 1982, enter the date of the ruling . . . . . . ▶

(b) Check box to indicate whether you are an operating foundation described in section ☐ 4942(j)(3) or ☐ 4942(j)(5).

	Tax year	Prior 3 Years			
	(a) 1982	(b) 1981	(c) 1980	(d) 1979	(e) Total
2 (a) For 1982, enter the lesser of: (i) adjusted net income from Part I, line 25(c), or (ii) minimum investment return from Part VIII, line 6. For prior years, enter only the adjusted net income					
(b) 85% of line (a)					
(c) Qualifying distributions from Part X, line 4, for 1982 (enter corresponding amount for prior years) .					
(d) Amounts included in (c) not used directly for active conduct of exempt activities					
(e) Qualifying distributions made directly for active conduct of exempt purposes (line (c) minus line (d)) .					
3 Complete the alternative test in (a), (b), or (c) on which you rely:					
(a) "Assets" alternative test—enter:					
(1) Value of all assets					
(2) Value of assets qualifying under section 4942(j)(3)(B)(i) .					
(b) "Endowment" alternative test—Enter ⅔ of minimum investment return shown in Part VIII, line 6, for 1982 (enter ⅔ of comparable amount for prior years)					
(c) "Support" alternative test—enter:					
(1) Total support other than gross investment income (interest, dividends, rents, payments on securities loans (section 512(a)(5)), or royalties)					
(2) Support from general public and 5 or more exempt organizations as provided in section 4942(j)(3)(B)(iii)					
(3) Largest amount of support from an exempt organization .					
(4) Gross investment income . .					

Part XIII Supplementary Information (see instructions)

1 Information Regarding Foundation Managers

(a) List here any managers of the foundation who have contributed more than 2% of the total contributions received by the foundation before the close of any tax year (but only if they have contributed more than $5,000). (See section 507(d)(2).)

None

(b) List here any managers of the foundation who own 10% or more of the stock of a corporation (or an equally large portion of the ownership of a partnership or other entity) of which the foundation has a 10% or greater interest.

2 If you directly carry on any significant program service activity other than grant making as described in line 3, attach a statement describing each activity. Include relevant statistical information, such as the number of clients, patients, students, visitors, or members served.

None

Part XIII Supplementary Information (continued)

3 Information Regarding Grant and Loan Programs

If you award grants, scholarships, fellowships, loans, prizes, or similar benefits, enter the following information:

(a) The name, address, and telephone number of the person to whom applications should be addressed

SEE STATEMENT ATTACHED

(b) The form in which applications should be submitted and information and materials they should include

SEE COPY OF APPLICATION ATTACHED

(c) Any submission deadlines NO

~~[illegible]~~

(d) Any restrictions or limitations on awards, such as by geographical areas, charitable fields, kinds of institutions, or other factors

SEE COMY OF TESTAMENTARY WILL PROVISION ATTACHED

4 Grants and Contributions Paid During the Year or Approved for Future Payment

Recipient Name and address (home or business)	If recipient is an individual, show any relationship to any foundation manager or substantial contributor	Foundation Status of Recipient	Purpose of grant or contribution	Amount
(a) *Paid during year*				
SEE ATTACHED				
Total (Enter this amount on line 23, Part I, also.) . . . . ▶				
(b) *Approved for future payment*				
SEE ATTACHED				
Total . . . . ▶				

Part XIV Public Inspection

1 Enter the date the notice of availability of the annual return appeared in a newspaper ▶ April 27, 1983

2 Enter the name of the newspaper ▶ Winterset Madisonian

3 Check here ▶ ☒ if you have attached a copy of the newspaper notice as required by the instructions. (If the notice is not attached, the return will be considered incomplete.)

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer or fiduciary) is based on all information of which preparer has any knowledge.

▶ Signature of officer or trustee | Date | ▶ Title: Trustee

Paid Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed ▶ ☐	Preparer's social security no.
	Firm's name (or yours, if self-employed) and address ▶		E.I. No. ▶	
			ZIP code ▶	

SUPPLEMENTARY INFORMATION (continued) PART XIII - Item 3 (a) and (d) and
Item 4 (a) and (b)

NOTE: **No recipient has any relationship to any trustee. All scholarship grants were made for educational purposes.**

NAME ADDRESS TELEPHONE NO.	TOTAL GRANT	PREVIOUSLY PAID	AMOUNT PAID DURING 1982	AMOUNT APPROVED FOR FUTURE PAYMENT
David Woodley 321 W. Filmore Winterset, Iowa 50273 #462-4971	$1,500	$1,250	$ 250	None
Mary Howell Cumming, Iowa 50061 #981-4762	3200	2,000	800	$ 400
Mark McDonald R. R. Earlham, IA 50072 #462-3457	8,000	5,000	1,000	2,000
Brian Patten 722 E. Court Winterset, IA 50273 #462-2201	4,000	500	1,000	2,500
Karen Simon 211 E. Benton Winterset, IA 50273 #462-3948	4,000	500	1,000	2,500
Juane Duane Harrison 601 E. High St. Winterset, IA 50273 #462-2259	4,000	500	1,000	2,500
Tim Leonard 622 W. Washington Winterset, IA 50273 #462-3000	4,000	500	1,000	2,500
Shawn Rae McNelly 203 E High Winterset, IA 50273 #462-3183	2,000	0	1,000	1,000
Terry McNamara 510 W. Green Winterset, IA 50273 #462-3561	2,000	0	250	1,750

SUPPLEMENTARY INFORMATION (continued) PART XIII - Item 3 (d)

I direct that said trust fund shall be kept invested in first class securities and that the interest and income from said fund shall be used by said trustees, and their successors in office, to assist worthy children and young men and women, under twenty-one (21) years of age, who are residents of Madison County, Iowa, and who are handicapped by some physical disability, to obtain an education or vocational training.

AFFIDAVIT OF PUBLICATION

STATE OF IOWA }
} ss.
Madison County }

John Gorman BEING DULY SWORN SAYS HE IS publisher OF THE WINTERSET MADISONIAN, a once weekly newspaper of general circulation, published in Winterset, Iowa, and that the notice, a copy of which is annexed and made part hereof, was correctly published in said newspaper

for the period of one consecutive weeks

the last publication thereof being on the 27 day of

April 19 83

John Gorman

Subscribed and sworn to before me this 4 day of

May 19 83

JoDayle Irvin
NOTARY PUBLIC
In and for Madison County

Fee $ 6.20

JoDAYLE IRVIN
MY COMMISSION EXPIRES
2-23-86

PUBLIC NOTICES

NOTICE OF ABNER AND ELIZA BLACK MEMORIAL FUND

YOU ARE HEREBY NOTIFIED that the Annual Report filed by the Trustees of the Abner and Eliza Black Memorial Fund, pursuant to Internal Revenue Code Section 6056, is available to you for inspection at the office of the Clerk of the District Court of the State of Iowa in and for Madison County, at the Courthouse in Winterset, Iowa, during the regular business hours. Such inspection is available to any citizen who requests the same. This foundation's principal manager is Shirley A. Webster, Farmers and Merchants State Bank Building, Winterset, Iowa.

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WESTERN CONSORTIUM FOR THE HEALTH PROFESSIONS, INC.,
San Francisco, Calif., July 6, 1983.

Hon. FORTNEY H. STARK,
House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR MR. STARK: On June 27–28 the Oversight Subcommittee of the U.S. House Committee on Ways and Means was scheduled to hold hearings to review the 1969 Tax Act's effect on private foundations. The Western Consortium for the Health Professions would like to express its concern for the impact of these hearings on the availability of continued support for health services research, education and evaluations from private foundations.

We are particularly concerned over the negative impact which the excess business holdings provision of the 1969 Tax Act has had on one of our major supporters: the W. K. Kellogg Foundation of Battle Creek, Michigan. This provision (Section 4943) on "excess" business holdings of private foundations limits the proportion of stock of any particular business enterprise which a private foundation, like Kellogg, may own.

This restriction has proven to be unnecessary, in our judgement, because of other provisions of tax and trust law and an unwarranted intrusion of the investment rights and responsiblities of foundation managers and trustees. For example, *no* other charities are so restricted in their portfolio management, and we don't believe private foundations should be either. This provision has also helped to effectively "kill" the birth of new major foundations since the 1969 Tax Act.

Ultimately of course, our concern is with the future grantmaking capability of foundations like Kellogg and with the best interests of philanthropy. The Kellogg Foundation has an outstanding record in terms of both asset growth *and* payout for charitable purposes. Yet it faces the prospect of forced divestiture under the existing excess business holdings provisions. Such a divestiture could drastically lower funds which the Kellogg Foundation has available to support the Western Consortium and other nonprofit organizations undertaking research and other projects in the health field so critical in this time of reduced direct federal support for such activities, and at a time when, given the fundamental changes affecting health care and the health services industry, such activities are more important than ever.

Your support of the Kellogg Foundation during the scheduled and subsequent hearing, and relief for the Foundation from the excess business holdings provision, will be much appreciated. I would be pleased to answer any questions which you or members of your staff might have. Thanks, once again, for your continued leadership and efforts on behalf of our District.

Very truly yours,

JOSEPH M. HAFEY, *Executive Director.*

WHITTIER ALLIANCE,
Minneapolis, Minn., June 15, 1983.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: This letter is to support the valuable role of private foundations in community development. In 1978 the Whittier Alliance, a community development corporation, and the Dayton-Hudson Foundation formed an important partnership for the revitalization of the Whittier neighborhood in Minneapolis, Minnesota. The Dayton-Hudson Foundation, following an extensive planning effort with the community, committed $1,000,000 over a period of five years for the self guided revitilization efforts of the Whittier neighborhood. This partnership has helped turn a once declining inter city neighborhood into a vibrant community.

The Dayton-Hudson Foundation demonstrated great leadership in working closely with a neighborhood based organization, and has helped to leverage the involvement of other private businesses and public agencies in this revitalization effort. The work of the Foundation and Whittier Alliance serves as a model for other partnerships throughout the country.

Our experience shows the value that a private foundation can hold in providing leadership and new ways to combat community problems and to create models for other successful efforts. The importance of private foundations in community development efforts is made greater in light of recent cutbacks in public funding for similar efforts.

The accomplishments of the Whittier neighborhood with the support of the Dayton-Hudson Foundation in the past six years are too numerous to list in this brief letter. But, in the past year we can site the following accomplishments:

Development of seven townhouse units for moderate income families;

Instituted the first neighborhood commercial below market rate interest loan program (12 loans for over $100,000 were administered the first year in conjunction with nine banks the first year of the program);

Instituted a crime prevention program, promoting Whistle Stop, effective police relationships, and block and apartment clubs;

Formed Whittier Wood, a youth employment enterprise to provide job skills and work experience to disadvantaged neighborhood youth;

Continued the effective exterior rehabilitation loan program;

Started construction of pedestrianway improvements for the 26th and Nicollet commercial area;

Sponsored Summer C.E.T.A. youth projects in conjunction with the Center for Community Action (two murals completed); and

Sponsored community events, including a Spring dance, park concert, public forum, and neighborhood tour, to create neighborhood awareness and social interaction.

With the support of sixteen other private foundations, the Whittier Alliance will undertake even more ambitious projects in the upcoming year. Therefore, we cannot stress enough the significance of private foundations in helping to address community problems. Although I will be unable to attend the hearings scheduled later this month, I ask that this letter be made an official part of the hearing record.

Sincerely,

KRIS S. NELSON, *Executive Director.*

STATEMENT OF YMCA OF THE USA WASHINGTON OFFICE

The YMCA of the USA is pleased to support the elimination of tax disincentives for gifts to foundations as proposed in H.R. 3043. We believe the income tax deduction rules for gifts to private foundations should be the same as gifts to other charities. This change will make more foundation money available to charitable organizations such as the YMCA.

Although we do not claim to be experts on laws governing foundations, YMCAs throughout the country have been the frequent beneficiaries of foundation support. Over the past ten years, the national YMCA and individual YMCAs have received over 1,800 grants from the top 400 foundations in the country.[1] As no foundation grant in the printout is for less then $5,000, we are talking about many millions over that period.

At a time when government funding sources are being curtailed at all three levels (federal, state, and local), charitable organizations must increasingly turn to foundations for support—especially for innovative programs. Before we describe a handful of examples among the literally thousands of foundation grants YMCAs have received, there are some important points to be made regarding foundation funding in general, in the YMCA experience:

1. Usually such funding provides the flexibility to a YMCA not available through other sources of income such as standard membership and program fees, to say nothing of government grants. If the initial program approach proves less effective than expected, often changes can be made without submission of multiple copies of amended proposals. Risks can be taken that can lead to innovative program that otherwise would not be possible through other traditional sources of income.
2. Funding from one foundation often generates funding from other sources including other foundations in following years.
3. Foundation funding can lead to collaborative programs efforts that maximize the now critically stretched resources of a variety of not-for-profit and governmental agencies. In turn, creativity is generated, unnecessary duplication is avoided, and volunteers are often sought out and utilized in more substantive ways than ever before.

We would like to share with you some successful programs started by foundation grants in three YMCAs: the Harlem and the Uptown Branches of the Greater New York YMCA; the Tampa, Florida, YMCA; and the Austin, Texas, YMCA.

1. Since 1980, the Ford Foundation has given $450,000 to a program administered by the Harlem YMCA addressing the needs of pregnant teenagers from the age of

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[1] Foundation Grants Index computer printout, 1973 to April 1983.

11 through 17 as well as of their families. Project Redirection has also received $70,000 more from the New York Community Trust, the Helena Rubenstein Foundation, and the J.C. Penney Foundation. This program has been so successful that it has become a national model for similar efforts throughout the United States and has been presented as such at many forums—most recently the Urban League here in Washington, DC. The kinds of services made available to the several hundred young women/children and their families have included:

A. teaching parenting skills;

B. encouraging prospective mothers to continue or return to school;

C. promoting good health care and nutritional information;

D. employment and training skills to enable those who will be single heads of households to support their children, along with an array of counseling services and programs from dozens of community agencies often previously unknown to these clients.

The use of volunteer mentors, called "community women," in this program contributes enormously to the success. These women are residents of the Harlem community and perform an informal advocate role for the young mother and her family. They are on call seven days a week and perform a variety of functions including accompanying the client to the hospital when delivery is near, helping her register at school, or preparing for a job interview. This total community effort has brought together agencies and services that never before related to each other in many cases, much less made an effort to provide the total array of services needed by this particular target population.

2. Support from the Louis Calder, Barker Welfare, Charles Frueauff, and J. C. Penney Foundations, along with $18,000 in New York City Youth Board summer recreation funds, has enabled the Uptown Branch YMCA to survive. No other agency in the Uptown community on the Upper West Side of Manhattan between 95th and 110th Streets serves the general needs of young people. Without foundation support the annual deficit incurred at this branch of $100,000 would doubtless require closing down the after-school program and the teen program provided. The after-school program provides comprehensive care for children ages 5 to 12 from 3 to 6:30 p.m. Educational and recreational activities are carefully designed to forestall feelings of isolation and powerlessness by developing social and intellectual skills and emotional support for dealing more effectively with their home, school, and neighborhood influences. For children over 12, the teen program designed by the Uptown Branch helps these young people acquire leadership and communication skills which begin to promote confidence and the belief they can make decisions which will alter the course of their lives. The Uptown Y teen program also benefits from the fortunate circumstance that a cohesive community-based network of 42 youth-related services exists in the neighborhood. The "West Side Task Force for Youth" enables Y staff to refer youth with special needs to the appropriate agencies and to receive referrals from these agencies.

3. In Tampa, Florida, the Conn Foundation has contributed $20,000 over two and a half years in start-up funds to provide after-school child care which has already benefitted over 500 youth.

4. The Austin, Texas, YMCA received a seed grant from the Lola Wright Foundation of $22,000 to coordinate badly needed recreational activities to provide disabled, health-impaired youth and adults with well developed fitness programs that will result in the development of:

A. physical and motor skills necessary for daily living activities;

B. a more positive self-image and feeling of self-worth;

C. more confidence to enable many participants to move into mainstream YMCA programs, which whenever possible is the most desirable approach to this special population.

This grant has demonstrated the YMCAs ability to serve as a facilitator by:

A. exchanging YMCA staff time for swimming facilities presently unavailable at the YMCA;

B. drawing from an established volunteer pool and recruiting other volunteers who then become familiar with this special population;

C. coordinating service programs with a variety of agencies resulting in savings in operating equipment and capital expenditures;

D. collaborating among agencies (which was previously almost non-existent).

In addition, certain needs of the disabled clients have been met by:

A. providing group recreational activities that reduce the clients' sense of isolation (which often leads to a negative self-image and depression);

B. better public acceptance through direct contact with volunteers who have never worked with or been exposed to this special population before and subsequently experience attitudinal changes;

C. by providing opportunities for special education and other kinds of students to work with this population as interns, better teachers and specialists will later be available to work with this group.

There are many hundreds of examples we could have provided on the value of foundation support; we believe the above-described programs indicate the broad spectrum of foundation support to YMCAs and how important they have been. We thank you for your consideration.

WENATCHEE VALLEY Y.M.C.A.,
Wenatchee, Wash., June 22, 1983.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee for Oversight, Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

DEAR REPRESENTATIVE RANGEL: Thank you for giving us an opportunity to express our opinions concerning the Tax Reform Act of 1969 and the adverse effect it has on the Wenatchee, Washington Young Men's Christian Association, a beneficiary of the A.Z. Wells Foundation.

Our Y.M.C.A. has benefited financially since 1950 from the extremely well managed A.Z. Wells Foundation. We have been able to offer a needed and well received program to the youth and adults of our valley because of the generosity of Mr. A.Z. Wells.

The requirements in the Tax Reform Act of 1969 requiring that the Foundation divest itself of the stock over a period of time seems to unnecessarily cause the Trustee to deviate from the wishes of Mr. A.Z. Wells. The requirement that the Foundation must distribute 5% of its net asset value annually whether or not this comes from income or principal would make operation of good business ventures difficult. All recipients of the Foundation would suffer-if the businesses providing the funds were prevented from using sound business practices of providing reserves and stability in their operations.

It also seems that it would be reasonable to have the foundation continue to hold the majority of the stock for the same reasons as outlined above. The beneficiaries would only benefit if the Foundation is allowed to operate profitably.

It is the opinion of the Wenatchee Y.M.C.A. Board that it would be beneficial to all the beneficiaries and the Wenatchee Valley community for the two pioneer Wenatchee businesses to operate under trust management and that grantors in general should be allowed to set up similar endowment type trusts and know they could continue without government intervention except for such policing as is necessary to insure proper operation.

Sincerely,

MARGUERITE SHAMBERGER,
President—Board of Directors.

ERNIE ELDER,
President—Board of Trustees.

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